

No. 2905

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

CLALLAM LUMBER COMPANY, a Corporation,
Plaintiff,

Appellant

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer, De-
fendants,

Appellees

RECORD ON APPEAL

(In Four Volumes)

Vol. 2—Pages 87 to 436

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

SHERMAN PRINTING AND BINDING CO., SEATTLE, WASH.

Filed

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F. D. Monckton,
Clerk.

CAUSES 36-37, 56-57.

STATEMENT OF FACTS ON APPEAL.

BE IT REMEMBERED that on the 15th day of September, 1915, the above entitled causes came regularly on for trial in the above entitled court before the Honorable E. E. Cushman, Judge, sitting in Equity, the respective parties being represented as follows: Clallam Lumber Company, plaintiff in causes Nos. 36 and 56, and Charles H. Ruddock and Timothy H. McCarthy, plaintiffs in causes Nos. 37 and 57, being represented by Peters & Powell, and Earle & Steinert, and W. F. Keeney, of counsel, and the defendants, Clallam County, and Clifford L. Babcock and Herbert H. Wood, treasurers, being represented by John E. Frost, C. F. Riddell and Edwin C. Ewing, attorneys:

Thereupon it was agreed by all parties hereto that causes Nos. 36 and 37, 56 and 57, filed and pending in this court, should be consolidated for the purposes of trial, and same were thereupon presented and argued together, upon the same testimony and the same evidence, in accordance with the order of the court then made.

Thereupon the following testimony was introduced on behalf of the plaintiffs:

T. A. Rixon, produced as a witness on behalf of plaintiffs, testified as follows:

That he was a civil engineer, 52 years of age, living at Sappho, Clallam County, Washington, where he had lived some seven years on a previous occasion and recently for fourteen months. As forest expert for the United States government he was making a cruise for the Western forest reserves during the period from 1898 up to 1913 with a break of three years, a portion of which time he was in Alaska and during a portion of which he was working for the Oregon & Washington Railroad. For the government he had been making a general reconaissance, topographical maps, estimates of timber and establishing boundaries of the various reserves. In this connection he had cruised all of Clallam County roughly to establish the boundaries of the forest reserve. At the present time he is

employed by the plaintiffs, in looking after and cruising timber and attending to the fire patrol. He was chief engineer for the county of Clallam for the construction of their highways for a period of eighteen months.

In his engineering he had experience in reconnaissances for the projection of a railway from Grays Harbor to Lake Crescent and to Ozette Lake, the Lake being located in township 31 north range 15 west. The road came along the west side of the Lake and down to its southeast corner. It ran down Callawa Creek to the Dickey, and from the Dickey to the Sol Duc and the Bogachial, and then the Hoko, to the coast, following the coast down from the mouth of the Pysht. He made that reconnaissance in 1909 for the Oregon & Washington Railroad Company. No part of it has ever been built.

The witness was asked to give a description of the general physical contours on the land in question when the following took place:

MR. FROST: If your Honor pleases we desire to interpose another objection. I do not want to be technical, but these plaintiffs have pleaded a County cruise. They have estopped themselves there in any way denying or assailing the County cruise. They are bound by it; because they alleged affirmatively in their own pleadings that the County cruise shows the quantity and character of their timber.

THE COURT: You don't object to the County cruise?

MR. PETERS: No, your Honor.

Exhibit "A" was introduced by the plaintiffs and received as a map showing the location of the zones of timber and physical features of Western Clallam County. Referring to this map, Exhibit "A" the witness described Zone 1 as follows: From the east end of the county back to Twin Rivers there is a gradually sloping bench, sloping to the Straits for an approximate width of three miles. Back from the Straits this bench is elevated about 100 feet high on the shore line, and at six miles back from the shore, about 500 feet high. From Twin Rivers west there

is a broken country gradually sloping from the Straits with numerous deep ridges and canyons, these ridges and canyons running northeasterly. The elevation in this portion runs up, as high as 2000 feet.

South of the line in red, marking the south boundary of Zone 1 the country is mountainous. Referring to Zone —, lying immediately south of Zone 1, a portion of it is not very broken. It has a few hills in it, but is fairly level ground, but south of it are high mountains going all along. Where the broken line is shown on the map is the termination of the surveys, the land included in the blank space being too mountainous to survey. This land extends westerly to an elevation of about 2000 feet through to the Hoko River. There is a low pass at the Hoko and then the elevation climbs up to about 2000 feet just east of the Hoko and then the elevation runs in a southeasterly direction with the white in the blank space on the map, this being in Zone 2. That broken country extends over easterly to Lake Crescent and follows around to the south side of Lake Crescent to Lake Sutherland. This elevation from Lake Crescent to the Hoko runs from about 2500 to 4200 feet. It is very abrupt, especially from the south side. The north side sloping to the north is more gradual. The summit of this high elevation is about nine miles back from the Straits lying north of the plaintiffs' lands.

As to the character of the land to the south of this broken elevation along the Solduc River that comes up through the plaintiffs' timber, there is a valley varying from a mile to probably two miles wide, a level plateau, running at an elevation of about 250 feet at the lower end to 750 feet at the upper end, in a distance of some twenty miles.

Now going to the south of the Solduc River comes the Calawa River. That country is very broken up by mountains and ridges, the ridges running north and south approximately, the land running some 2500 feet high. There is a high mountainous ridge about 3000 feet between the valleys of the Solduc and Calawa

Rivers, following the main divide of the Solduc and Calawa up on the divide of the Hoko River, climbing up to a height of some 6000 feet eventually.

The lands in Zone 4 are considerably rougher ground than in Zone 2. Where the lands colored in yellow lie, that is the lands of Ruddock & McCarthy, is a level bench. West of these lands is a rolling country. To the west and northwest of the lands of the Clallam Lumber Company it is mountainous, the mountains heading off to the Hoko River. The height of the summit along the Sol Duc Valley and Lake Crescent is 1125 feet, according to railroad surveys. The witness being asked to point what course he would take for a railroad if one wished to get out of the country where these timber lands of the plaintiffs' lie, to transportation, and what elevations would have to be surmounted, he says that there is one road by way of the Dickey River over to the west; you would follow Dickey River up to Dickey Lake and across the divide, a low divide, and a channel only 250 feet high above the water, and follow down the Hoko River back to the Straits and out to Clallam Bay, that is, going west in the first place and then to the north and northeasterly. The length of that road would be about 50 miles. There is another route by way of Beaver Creek. Beaver Creek comes into the Solduc River in the southwest corner of Township 30 North, Range 12 West. I would follow that creek in a northeasterly direction crossing Burnt Mountain and then down to the Pysht. The highest elevation that would be encountered here would be 1000 feet. This would be a distance of some 25 miles.

Another route would be from the Solduc River to Bear Creek thence to the divide, thence down to Deep Creek, swinging around the mountains to Twin River and coming on to the grade at Port Angeles, about half way between the Lyre River and Twin River. This would be in the neighborhood of 60 miles and the highest summit that would have to be surmounted would be 1100 feet.

Another method of crossing would be to follow down the coast to Grays Harbor, a distance of some 75 miles to connect with the nearest railroad. The highest elevation that would be encountered by this route would be some 300 feet.

The witness stated his qualifications as follows: That he was not a graduate engineer; that his professional education as a civil engineer consisted of an apprenticeship from the time he was sixteen to nineteen years of age, and he further testified as follows:

Q. Now, what would be generally the cost of construction of a railroad out that way towards the Milwaukee?

MR. FROST: We object to that for the reason the witness is not yet qualified as a railroad construction expert.

THE COURT: Objection sustained. Exception allowed.

Q. (Mr. Peters) Have you had any experience with estimating the cost of construction railroads?

A. Yes, sir.

Q. For instance, in your experience with the Oregon & Washington, was it, you said?

A. Yes, sir.

Q. Did you have to take into consideration the gradients and the cost of road-beds, and the cost of construction in determining that road and reporting upon it?

A. Yes, sir.

Q. Have you had experience in the method of determining the cost of a road through a new country?

A. Yes, sir.

MR. PETERS: We submit he is qualified.

MR. FROST: The witness has not shown that he constructed a railroad, that he has had charge of the construction of a railroad.

THE COURT: That goes to the weight of his evidence and not to its admissibility.

Q. (Mr. Peters) Have you ever constructed a railroad?

A. Yes, sir.

Q. Assisted in it?

A. Yes, sir.

Q. What road?

A. The Duluth, Southshore & Atlantic.

Q. How much construction work was there?

A. I had twenty-four miles of construction.

Q. How long was that?

A. About a year all told.

Q. Standard gage road?

A. Yes, sir.

Q. Any other work of that nature?

A. I was the chief engineer on the Tanana Mines Railroad in Alaska. Although we did not build in there we made an estimate for the contractors to build on.

Q. Build by contract, you made an estimate?

A. Yes, sir.

Q. Afterwards checked up the estimate and passed on the work?

A. Yes.

The nearest railroad to these lands of the plaintiffs now existing is the Milwaukee, a little west of the Lyre River. As to the cost of a railroad to connect with the Milwaukee road and to run into these lands, the witness made the following estimate:

Taking the Solduc line to Lake Crescent, from the center of this timber up to Lake Crescent, would be fairly easy construction. That could be built including the bridging across the Soldue River for possibly \$5000 per miles; from two miles west of the lake to Piedmont would cost some \$25,000 a mile, these estimates covering only grading without the steel laid or ties. The steel would run up to \$30,000 per mile. On the narrows along the side of the lake would be some heavy tunneling amounting to about a mile in all; from Piedmont in to Port Angeles would be a distance of 25 miles, which would cost \$10,000 a mile exclusive of the bridge across the Elwah River which bridge would probably cost some \$40,000.

Now going from the timber out the other way, to the southwest to Grays Harbor, 70 miles of railway

equipped with sixty-pound rails, would cost probably about \$15,000 per mile. Added to this would be three large bridges at \$20,000 apiece.

Taking the proposed route by the Hoko River to the Straits, the witness made the following estimate: From the lands up the canyon on the Hoko, that is about thirty miles, a railway laid with steel would cost about \$12,000 per mile. The balance of it would run about \$20,000 per mile for about 12 miles. Asked as to the facilities for logging on the Straits between Port Angeles on the east and Neah Bay on the west, the witness says that there are practically but two places that would hold any logs and they are not extra good; one is Clallam Bay and the other is Port Crescent. They are protected at Clallam Bay only from certain winds. Logs dumped into the bay would be exposed to the northeast gales, which would drive them on the bank. You can't hold your logs during the winter. For five months of the year you could not hold logs there with any safety. You might dredge out logging ground at Pysht River. This river mouth is owned by Merrill & Ring, who own all the country in there, both sides of the river.

The witness being interrogated as to the character of the timber in these zones, says:

The character and quality of the timber in Zone 1 varies considerably.

At this point in the testimony the following occurred:

MR. FROST: I would like to reiterate that counsel has admitted in open Court that they accept and adopt and do not deny the County cruise.

MR. PETERS: Yes, sir; I think we are both bound by that.

In Zone 1, running westerly to the Elwah River, these lands are mostly gone over. From the Elwah River running westerly in Zone 1 they are pretty well logged off up to the Lyre River and partially cut over from the Lyre back to the Pysht. From the Pysht over the west boundary of the zone the timber is large, old grown fir. From Gettysburg on the

east to the Pysht on the west this timber would run about 50 per cent Hemlock and 50 per cent fir and from the Pysht River westerly it runs 75 to 80 per cent fir and 20 per cent hemlock. This is magnificent, old growth, fire timber that possibly would run from 65 to 70 per cent No. 1 logs. The timber stands upon good logging ground. The difference between the timber in Zone 1 and Zone 2 is simply in the grade. The Merrill & Ring and Goodyear tracts standing on the Straits are far superior to the Clallam Lumber Company's tracts, the difference being \$1.25 per thousand stumpage value in favor of the Straits timber, west of the Pysht River. The timber around the Pysht River and Clallam Bay is large fir, yellow fir, approximately an average of six or seven feet in diameter and 150 to 175 feet to the first limb. The main bulk of this large timber is free from knots, which gives it a high grade. The Clallam Lumber Company's timber is of medium size, probably averaging four feet on the stump. It runs clear but has considerable knots all through the main trunks of the timber, which makes what ordinarily would be No. 1 logs No. 2 or No. 3. There is very little clear timber in the logs. Their timber, marked in yellow on the map (Exhibit "A") the McCarthy timber, is a little inferior to the Clallam Lumber Company's timber, a much rougher class of timber.

On cross examination the witness Rixon, testified as follows:

That in the elevated lands separating the timber lying along the Solduc River in Zone 2 from the timber lying along the Calawa River in Zone 4 there is a pass about 800 or 900 feet high. There is a pass in the elevation near Sappho only about 350 above the the general level of the country and there is no unsurmountable difficulty in going there with a railroad. The estimates that he made of the grades of the railroad would not be from actual surveys upon the ground, but from general observation, in other words, just guess work from an engineering standpoint. The witness had never engaged in the logging business or

dealing in timber or timber lands, but had sold timber. The timber of the Clallam Lumber Company would run 20% number one logs, 60% number twos and 20% number threes.

As to his qualifications for testifying to the values of timber, witness testified that when he was examining for the United States Government he examined as to value and reported on the value of timber; that he had occasion to make appraisals for the Government as to the values of timber whenever any business came up about examining for a sale. The Government would forward it to him and he would make a report and estimate the cost of it. Thereupon defendants objected to the qualifications of the witness to testify as an expert, which objection was overruled and exception allowed. Whereupon the witness testified as to the timber valuations as follows:

Upon being asked if he knew the value on March 1, 1913, of the timber in Zone No. 1, witness testified, 'Well, I do not know whether I can say—I do not know just exactly the price of logs in 1913, * * * The only way to arrive at the value of that timber would be what it would cost to log and what you would get for the logs when they are put in the water both. * * * If I had the log values I could figure out what their actual worth was, but taking the log values as they are today I could give you the relative difference between the Strait's timber and the Clallam Lumber Company's timber and the holdings, pointing out what were the values of logs, and what they are worth when they are put into the water.'

He had seen the timber in Zone 1 opened up and cut out.

The witness testifies that as far as booming the logs there would be the same difficulties for the "Straits" timber as for the timber in the interior, so that that element, in his judgment would make no difference in the value of the Straits timber and interior timber, the considerations that lead the witness to conclude that the timber in Zone 1 was worth \$1.25 a thousand were simply the witness's estimate of what

the logs would grade and what the logs would be worth in the market outside of the cost of hauling them in, or towage, or anything like that, and the witness testifies that he has never gone over these tracts in Zone No. 1 and Zone No. 2 by acres, taking each ten acres, going over it a couple of times and making a thorough and detailed cruise and tree count. The witness says that the facility of falling, bucking and yarding and loading timber as compared with smooth ground and rough ground should be taken into consideration in establishing the value of the timber, and these elements would influence the cost of the logging, and that the largest part of the timber land on the Kalawa River is much rougher than the timber land on the Straits. Referring to Zone 2 he says there is rough ground on Beaver Creek, but that other parts of this Zone 2 are level and can be logged a lot cheaper than the timber in zone 1.

On re-direct examination the witness Rixon says there is approximately a township of rough and broken land around the Merrill & Ring holdings which makes difficult logging ground for half of the township that is located in zone No. 1. There is also some broken ground on the Goodyear property, between the Clallam River and the Hoko River properties, about a township, but the timber is close to the river. Referring to the interior lands the witness says that about all of the Kalawa, all of zone 4 and within about a mile of the Sol Duc River is difficult mountainous country to log in, and more difficult than any of the Goodyear or Merrill and Ring properties. The witness is asked:

“Take this timber lying in Zone 2, this red line that comes down dividing it from Zone 5 and from Zone 4, and coming in here in this point, and coming along here, take this timber here, and the timber on the south line, and the southeast corner of zone 2, and the timber immediately next in zone 4, what, if anything is there of difference in the character and quality of those two parts of the plaintiffs’ lands?”

A. That piece on the bench immediately south of Beaver Creek in there, there are two sections in

there of flat ground. They are medium sized trees, probably four feet, some of them probably five feet on the stump. When you leave the bench and climb up on the hillside, steep ground, the timber gets larger, probably a little better grade of timber on the slope of the side hill than it is on the bottom.

Q. The slope of the side hill, is that in zone 3, 2, or 4?

A. It is on zone 4, immediately north, on the bench.

Q. I understand the timber on zone 4 is larger and higher grade than in zone 2?

A. Yes, sir, it is.

Q. Take sections throughout zone 2, for instance, do they all run the same in character and standing of timber, or is there a difference in the run of the various sections?

A. The sections vary considerably, as regards to the stand and regard to the quality.

Q. You say with respect to the quality as well as the stand?

A. Yes, sir.

Q. Is that true of the timber both the Lacey Company timber, and the Timothy-McCarty timber?

A. The McCarty timber is very even all over, the same quality and the same size, and practically the same stand.

Q. The Clallam Lumber Company's land varies in regard to the size.

A. The Clallam Lumber Company's land varies in regard to size, density of the stand and the amount of the stand.

On cross examination the witness says: that he made a topographical map of this country in 1898, 1899 and 1900, which was made for the United States Geological Survey for the purpose of establishing the boundaries of the Forest Reserve, and estimating the amount of timber standing on the ground. This topographical map is introduced in evidence by plaintiffs as Exhibit "B" the contour lines representing 250 feet

in elevation. These were based upon actual observations and field notes.

Eugene France, a witness produced by the plaintiffs is sworn and testified as follows:

He lives at Aberdeen, came to the State of Washington in 1886, and has lived here continuously ever since. Was Mayor of the City of Aberdeen from 1906 to 1908 and from 1912 to 1915. Has been engaged in buying and selling timber in the state of Washington since he came to the state. Has bought perhaps two and one-half billion feet of timber as a moderate estimate, and is holding some. Has also purchased and sold timber in Oregon, handling there some twenty-five thousand acres. Has had some experience in logging and lumbering operations and has been interested in several logging concerns since he came to the State, and is now interested in one here in Pacific County, where with others he has been engaged in logging for the past six or seven years, they having put in from fifteen to thirty million feet a year on the average. Witness has also had some experience as a timber cruiser; was engaged in that business for fifteen or sixteen years in the State of Washington. Has had some acquaintance with the lands of the plaintiffs, those shown upon Exhibit "A" marked in red and marked in yellow, and he has heard the testimony of T. A. Rixon with reference to Exhibit "A." Investigated some of these lands as far back as 1892, and was over some of the lands, and has reports on them from a cruiser, showing the character of the lands and also the method of getting the lumber out, and recently at the instance of the plaintiffs he went down into that country, and had occasion to observe generally the physical situation of the lands to some extent. I had reports on that. Has had no acquaintance with the lands on the Straits except that he passed through a part of them where the Goodyear Company was logging, over by the Hoko River. Asked to give his opinion as to the value of the interior timber on the plaintiff's land, he says:

"A. Well, it would be very hard to place a buy-

ing value upon it, because timber in a general way has been depreciating since 1908, but I would think, that if the parties owning this timber could get an offer of \$1.00 per thousand for the fir, spruce and cedar, it would have been an offer that if I had been the one holding the timber I would very quickly have embraced."

Referring to the hemlock he says that hemlock has no value, and had no value in March, 1913. That he never put in any hemlock where he could avoid it, except it was in the way of other timber, but left it standing because he had not considered it worth logging. Witness is then asked:

"Q. Knowing the situation as you do, from your examination of the interior timber, and from Mr. Rixon's testimony, as to how it lies, the distance from the Straits, etc., what would you say was the market value of the fir, spruce and cedar in March, 1913, that is the value per thousand?"

A. Do you mean the stumpage?

Q. Yes, the stumpage.

A. Well, I do not think you could have sold it for over a dollar a thousand, and I doubt if you could have sold it for that."

Asked as to the value of the timber in zone 1, now and in March, 1913, he says:

"Well, that timber that was handiest to the water and to the straits, it might be possible by logging to get \$2.00 a thousand for it."

"Well, I am not acquainted with the conditions in that part of the country enough to say positively; but I would say that two dollars a thousand would have been a good price for it."

Asked as to the quality of the timber from the Straits as compared with that from the interior, the witness says that so far as he observed the quality of the timber that lay out toward the Straits was superior to that further in the interior. There is not so much clear timber in the interior as upon the Straits. The timber in the interior would run more to No. 2 and merchantable logs. Witness says that the timber

market since 1910 has in a general way depreciated, and has kept depreciating. There has been no increase in the market value of timber in the State of Washington in the year 1914 over 1913. He thinks that timber values have fallen off since 1912 from 35% to 40% by a gradual change.

On cross-examination witness is asked whether on the recent trip he went out into the timber and made examinations of it. He says that he did in three or four places. He says that he did not make a thorough examination, but passed through on the roads that were cut through the timber, and walked out in the timber in different places, but did not attempt to cruise it in sections, they did not have time. He places a higher value upon the Straits timber than upon the interior timber because of its accessibility and because of the better quality of the timber. The witness did not examine detailed cruises showing the quantity and quality of the timber. The witness was asked, if by reliable cruise, it should be shown that the timber in the interior had a higher average stand per acre and graded of superior quality and that the logging conditions were easier, whether that would alter his views in any way. The witness answered that with the knowledge he had and the reports he had, he would have to 'put his peepers on it'; that he had not examined a recent cruise or cruises, topographical maps or reports upon the timber, except that he had seen some maps, the gentlemen had some maps, but he did not see the cruises; he had not examined any detailed cruises showing the quantity and quality. In other words, his judgment was rather an off-hand opinion. Mr. Polson recently made the witness an offer on six hundred million feet, which Mr. Polson's railroad is within three miles of. Witness says that he sold Mr. Polson about sixty million feet of timber in 1913 for \$145,000.00, this timber being right up against Mr. Polson's road. It is some twenty-five miles from Grays Harbor. He received for that timber an average price of not quite \$2.40 a thousand. Asked if this timber was not just as remote from Grays Harbor or the

only harbor or the only market as this timber in question here is from the Straits of Fuca, he says no, by no manner of means, he had logged right up next to the timber off this creek, and had run timber out and run it down to the Harbor. He says that you have to have a railroad to log this timber in suit, but he did not have to have a railroad to log his timber. The timber he sold to the Polson Logging Company was being logged to a railroad and was being hauled over a railroad, a private railroad in the next section. The Polson Logging Road extends back only about twenty miles. If the timber in the interior could be placed on a parity with the timber on the outside zone the witness would say that in the way of quality there was probably 75 cents a thousand difference.

Q. (Mr. Frost) Mr. France, would you put such observations as you have made, such investigations as you have made recently, and in the past concerning this timber up against a complete competent and reliable cruise?

A. Well, not if it were competent, complete and reliable, I would not; but I might investigate to see whether such was the fact or not.

Q. In other words you haven't based your opinion upon any cruise, or any complete or detailed information concerning this timber, but it is simply an impression that you have received from recently riding through the timber in an automobile, isn't that the fact?

A. No, sir; I had this same impression concerning this from the cruiser's report that went over it over twenty years ago.

Q. And your mind dates back twenty years ago?

A. That was the impression I had. I had his report and had access to it, and I had the same impression about the timber before I came to see it that I had after I had gone through it in the automobile.

Q. You rode through it in an automobile, as a matter of fact?

A. Yes, sir.

Q. That was the extent of your investigation?

A. As I told you, with the exception of two or three instances where we got off and walked into the timber.

Q. How far into the timber did you walk?

A. A half a mile, at times.

Q. Went in where there was a road?

A. Yes, sir; there were instances where we went a mile.

Q. Could you identify the sections you went into?

A. No, sir, I could not.

MR. FROST: I want to make an explanation to the Court right now. I made a slip of the tongue then, and many of us will do that, and many of the witnesses will in this case. This timber, if I may be permitted to make the remark, is known as the "Lacey timber," and "Lacey holdings" in Clallam County; and I presume counsel will make use of that statement also, and may it be understood when we refer to "Lacey timber" and "Lacey holdings" we mean the timber of the plaintiffs in this case.

A. I did have a way of locating myself on some of it, so I might state that I was on the Lacey holdings. They had maps with them, and they showed me the Forks, and showed me their timber laying right up next to this place called "Forks." I know that in riding through there I must have been on some of the Lacey holdings.

Q. You could not positively identify anything that you looked at?

A. Oh, yes, I could go back there and go over the same ground.

Q. But you can't tell the Court what you looked at?

A. No, sir, not exactly, I can tell you in a general way.

Q. Was your examination of the Straits zone as thorough and complete as your examination of the Lacey holdings?

A. No, sir, I don't think so; because I only left the car once to look at some of the timber that was

being cut by the Goodyear Company, in what was known as the Robinson tracts.

Q. As a matter of fact you simply traveled over the road from Sappho to Clallam and back again.

A. Yes, sir.

Q. And back again?

A. Yes, sir.

Q. In an automobile?

A. Yes, sir.

Q. Were you down to the Pysht?

A. No, sir.

Q. You got out of the automobile once, didn't you, to look at the timber?

A. To look at the timber where the Goodyear people were cutting.

Q. A short distance south of Clallam?

A. Not far from Clallam.

Q. Were you ever in this timber here? (Pointing.)

A. No, sir.

Q. Were you ever in this? (Another place.)

A. No, sir.

Q. Then, as a matter of fact all you know of it is simply hearsay?

A. I know what I saw; I told you what I saw.

Q. All you saw is what you saw from the automobile on the route that cuts about a few miles through one portion of the zone?

A. That is all I saw, was the Goodyear timber, the Robinson timber.

Q. Mr. France, what authority, upon what grounds do you say that that timber is worth approximately \$2.00 a thousand?

A. Well, that timber outside, I seen quite a bunch of it cut and I saw it in the log, and if it was all as good as that it would perhaps net a man more than \$2.00 a thousand.

Q. All you saw was the timber that lay along the automobile route?

A. It was back from the automobile road.

Q. How far back did you go?

A. I went back perhaps nearly a quarter of a mile.

MR. FROST: I want to call your Honor's attention to the fact that that zone is probably 50 miles long, 12 townships 6 miles to the township,—72 miles long.

On re-direct examination the witness says that the sale of timber, six hundred million feet that he referred to, that timber was then three miles off a logging railroad. The offer was made France and his people about in March, 1914, and was at the price of \$2.33 per thousand, but no sale was made. Questioned as to what would be the natural outlet for this interior timber to market, witness says that his reports show that it would come out to Grays Harbor better than any other point; that at this point in Grays Harbor there is a large lumber point, with large mills operating. Witness thinks that while it could be taken out by way of the Straits, that the logical outlet for it was by way of Grays Harbor.

THOMAS BORDEAUX, duly sworn on behalf of the plaintiffs testified on direct examination, as follows:

The defendants admitted of record that Mr. Bordeaux is engaged in the lumbering and logging business extensively, and that he has bought and sold timber lands and is well qualified as to the value of timber and with logging and manufacturing conditions throughout the State of Washington. He has lived in the City of Seattle continuously for eleven years. He was in Clallam County last July, which is the only time the witness has ever been in Clallam County. Went there at the request of the plaintiffs in this case and viewed this timber. He went down into the timber. Witness says that the location is quite remote at the present time, and the timber is separated from the Straits by a range of hills. 'Along the Straits he went in the wagon road that ran through it. We saw some of the Goodyear timber camp. They were building a railroad when I was there; they were just building a railroad.' Asked as to his judgment as to the com-

parative value of the Straits timber and the timber of the interior, he says that what he had seen of the Straits timber on the road from Clallam up to the summit is a little better grade than over the summit. He does not think there is much difference as to the comparative age of the timber on the Straits and the timber in the interior. He would value the fir, spruce and cedar of the interior lands in March, 1913, at about \$1.00 a thousand, and the hemlock at fifty cents per thousand, while the market value of the fir, spruce and cedar of the Straits timber at the same time was \$2.00 a thousand, and the hemlock of the Straits from fifty cents to seventy-five cents a thousand. He is acquainted some with the Grays Harbor country and would rather believe, what he knows about the country, that the natural outlet for the interior timber would be down to Grays Harbor. He thinks that the interior timber lands lie in very rough ground in the hills for the most part. Some of it lies along the river bottoms, which are not wide. In his judgment the timber on the interior lands was not the same in every section, in quality, character or stand; some sections were better than others. Timber is less valuable now than it was in March, 1912. Timber depreciated from 1912 to 1913 twelve per cent, and in 1913 and 1914 from ten to fifteen per cent more by a gradual depreciation.

Q. How extensive were your investigations and examination of this Lacey timber?

A. Not very much, just merely going through the timber, following the County road, the wagon road.

Q. In other words you went down through that country in an automobile and back, did you not?

A. Yes, sir.

Q. That was about all you looked at?

A. Yes, sir.

Q. That was the extent of your examination?

A. Yes, sir.

Q. And then you rode over the County road north to Clallam Bay?

A. Yes, sir.

Q. And back?

A. Yes, sir. We went to Forks Prairie from Clallam Bay, and then from Forks Prairie to Sol Duc Hot Springs.

Q. Did you go down through the timber to Quillayute?

A. The wagon road, went through the timber.

Q. Did you go down through the Lacey holdings west to Forks; in other words after you left the town of Forks you come back across the river, did you, back that road, and go back west to Quillayute prairie?

A. I am not able to say what the position would be west of the prairie now. There is a road that goes down to the mouth of the river?

Q. Yes, sir.

A. We did not go down there.

Q. You did not go down there?

A. No, sir.

Q. Then, as a matter of fact, if that was the case you did not see any timber belonging to Ruddock and McCarty in this zone, you did not even ride through it in an automobile?

A. Just rode in the automobile.

Q. In other words you came across to Clallam Bay?

A. Yes, sir.

Q. And down to Forks?

A. Yes, sir.

Q. And from Forks you rode back up to Sol Duc Hot Springs?

A. Yes, sir.

Q. And did not go into the timber of the plaintiffs, Ruddock and McCarty at all?

A. No, sir, did not go down there.

Q. Have you made a careful and thorough examination of the cruise of this timber with reference to the quantity and quality and the physical characteristics of it?

A. No, sir.

Q. You never have examined any cruise at all?

A. No.

Q. In other words, you are testifying upon the general impression that you got from riding along the public highway?

A. Yes, sir.

CROSS EXAMINATION

BY MR. EWING

Q. The conclusions that you drew in regard to the value of the timber, and its value being for logging purposes, and the natural market which you said you thought was Grays Harbor were depending to a considerable extent on what was told you by people who were with you and not by independent investigation you made yourself?

A. Well, I was told a great deal about it, about the elevation of that summit being a thousand feet high; that was what I was told. I can't prove that. We could see enough timber to have a pretty good idea about what the character of the timber itself is, and about the valuation of it too.

Q. I understood in one of the first questions asked you that you answered that you had never been in Clallam County but once?

A. That is all.

Q. And that was the time you went on this trip to look at this timber?

A. Yes, sir.

Q. You don't know anything about the timber conditions and logging conditions in Clallam County except what you discovered on that occasion?

A. No, sir."

Witness excused.

John A. Rea, witness on behalf of plaintiffs, testified as follows:

Has been a resident of the State of Washington for twenty-five years; lives at Tacoma. Is acquainted with property and property values throughout the state. Has been a Regent of the University of Washington for five years, which institution has about fifty thousand or fifty-five thousand acres of land. Has had occasion in this connection to examine into the gen-

eral value of timber. Also apart from his experience as Regent he has bought and sold timber lands in small quantities since 1890 in a dozen counties or more. The witness has had no specific experience in timber lands in Clallam County other than one trip through the County recently. The University has about four hundred acres of timber land in Clallam County near Lake Crescent. He went down about a month ago at the instance of the plaintiffs to look over this timber in connection with Mr. Bordeaux, Mr. Martin Grayham and Mr. Earles. Rode down through the timber and got out occasionally and looked at it. They went into the timber very little, not enough to say that they were in the timber very far. Asked about the character of the land upon which the timber stood witness says, "Principally you would call it hilly, almost mountainous back of Clallam Bay; we were travelling over a rough country, from general observations would say it was a broken country." Went through the timber of the Goodyear Logging Company on the wagon road and looked over the logging road the Goodyear people are putting in near the Hoko River. He is not prepared to compare the quality of plaintiffs' timber with that in zone 1, because he was not in the timber on the Straits and only knows of it by hearsay and common report. Would say that the Straits timber was worth double the timber of the interior because of the logging conditions and the distances and the isolation. On the Straits logging operations are possible at once even without a railroad, whereas in the interior one would have to build a logging road. Would say that hemlock was of no value at all—worth perhaps thirty cents or forty cents a thousand, and in the interior many buyers would not pay anything for it. He says that the timber market has been running off since 1910. He says that there have been no considerable sales of stumpage timber since 1913; that he follows the records, takes the newspapers and had not seen or heard of any.

On Cross-examination the witness, Rea says that after you get down into the Sol Duc Valley the land

is comparatively level. Witness admits that he would not buy this timber upon the examination he made of it. Witness does not know of the quality of the plaintiffs' timber in detail as against the quality of the timber in zone No. 1. If the timber in the interior were placed alongside the timber of the Straits it would be worth the same amount in the witness' judgment; the nearness to the transportation governs. The witness does not know anything about what the relative cost of logging plaintiffs' timber would be. When asked if that is not an essential factor in determining those things, the witness answered that the plaintiffs' timber is largely a speculative proposition and the witness does not know when it will be in demand after it is cut; he does not know whether the plaintiffs' timber can be cheaply and economically logged to the water; that is up to the logger to tell him; he does not know the quantity and quality of the plaintiffs' timber, but admits that it does cut a figure in the value. Witness does not know what the stand of timber in there is or what it grades and says, 'That has nothing to do with my notion.' Witness thinks that the value of the timber on the Straits is not speculative whereas that in the interior is speculative because of the want of transportation facilities. He does not know what the relative cost of logging the interior timber and of logging the Straits timber would be. He does not know the details or the character and quality of the timber on the lands, nor how many million feet there might be, nor how much per acre, nor how much No. 1 or how much No. 2. He does not think the interior lands are worth more than \$1.00 per thousand and it has to be held from ten to twenty years.

Earl C. Duvall, produced as a witness on behalf of the plaintiffs, having been first duly sworn testified as follows:

That he has been in the State of Washington since 1881, and a timber cruiser since 1888; was employed by the Port Blakeley Mill Company, the Northern Pacific Railroad Company, the Mason County Logging Company, and others; has bought and sold timber and

engaged in logging. He had charge of cruising timber lands in the west end of Clallam County in 1911, 1912 and 1913, a portion of those years. He had charge of the men in the field examining their work and checking it up. Referring to plaintiff's exhibit "A", and the lands marked in red and yellow, witness had substantially been over all these lands, and was acquainted with the character of the timber and the logging conditions and the general topography of the country. He was in attendance in court when Mr. T. A. Rixon testified and heard generally his testimony. The witness is asked by the plaintiff's counsel whether or not in his work as a cruiser he had occasion to observe the height of the passes on Beaver Creek and others. The witness describes the course of the summits or high land shown on the map, Exhibit "A". The summit he says is very crooked; there is quite a divide running along through the unsurveyed land, which is marked by blank spaces, and following a rather crooked course from the head of the streams, climbing bends. The bend divides to the south and the other branches bend up north. The blank spaces on the map would in the main indicate the course of the summit, these being unsurveyed portions. Referring to the timber, witness says that the Hoko tract of fir and spruce, and the Pysht fir and spruce are the best quality of timber, and a little older growth than the Sol Duc tract. Taking the timber in the Straits in Township 31, Range 9 and township 31, Range 10, over the Twin Rivers, there is probably two-thirds of it that is younger growth timber than the average timber on the north slope, and this would be on the market as logs of lower grade. After crossing the Twin Rivers to the west, from there on to the Pysht and from there up to the Burn on the Pysht the timber is largely old-growth fir. There is some on the slopes of the Straits that is younger growth, but the general body of timber is deteriorating from age and should be logged. It is the oldest growth timber in the country, and would probably cut a bigger per cent of clear than the timber further up. The zone line between zone No. 1 and zone

No. 2 seems to follow along the divide on the Straits' side of the divide. Adjoining sections of this timbered land vary materially in quality. He knows of no township where the quality of the timber runs uniformly throughout the entire township. Sections vary in quality and quantity. In the opinion of the witness the value of the timber lands marked in red, March 1, 1913, would be a dollar a thousand feet; he thinks there would be no change in the value between March 1, 1913, and March 1, 1914. "It is purely a speculative proposition, away from transportation. I do not think there has been much change in the last year in the value; logs are about the same price, a little hard to sell." The above price, \$1.00 a thousand refers to fir, cedar and spruce, the hemlock would not exceed fifty cents a thousand. He does not consider that there is any difference between the value of the hemlock marked in red and that marked in yellow. The timber in yellow stands on a little better ground, but is possibly not quite as good quality. Has never known of hemlock ties having any commercial value. They would only be of value to a person probably constructing a logging road. He would consider the fir, spruce and cedar on the lands about the Pysht and the Hoko to be worth about \$2.00 a thousand, and the hemlock about seventy-five cents a thousand. The witness bases the difference in value between the interior and exterior timber upon the facility of transportation, nearness to market and nearness to market, and the Hoko timber is a little better in quality—the fir and spruce. Since leaving the employment of Clallam County witness had been employed by Pierce County, checking up their values of timber lands, coal lands and farm lands. There had been no change in the market value of timber between March 1, 1912 and March 1, 1913, and no increase in the market value in 1914. Witness thinks that the body of the timber lands of the plaintiffs along the Sol Duc and Quillayute Rivers is probably a bigger body than the Straits timber. In saying this he excludes everything west of the Hoko River, the latter being the hemlock belt, which he would not con-

sider logging. That is a purely speculative proposition, you could not sell it if it was in the water.

On cross-examination, the witness testified that he cruised the timber in Pierce County for the purpose of assessments and taxation, and that having finished that job, he went up and cruised the West end of Clallam County; he had full charge of the cruise in the field and full power to employ and discharge his assistants; that that cruise was a fair and honest and conscientious cruise, the same cruise he would make for a corporation or an individual; that he thinks the cruise is a fair cruise; that it is an honest and fair and full cruise of the timber, and that to the best of his judgment and of the men who did the work, the quality of the timber, the physical characteristics of the ground, the logging conditions, and the other things that are explained in detail upon the cruise (which was later introduced in evidence as Defendants' Exhibits 19 and 20) are recorded truthfully and accurately.

M. H. Graham produced as a witness on behalf of the plaintiffs, being duly sworn, testified substantially as follows:

Mr. Graham's qualifications as an expert timber man and operator in all departments, was admitted by the defendants.

He had passed through the timber lands marked on Exhibit A some time ago, with Mr. Bordeaux and Mr. France, for the purpose of giving judgment upon the value and character of the lands. They did not make a very thorough examination. As to its general character it is a very good timber tract. He did not examine very thoroughly the character of the land as a logging proposition, as to whether it was broken or level. They only passed through the lands on the Hoko and Pysht on the County road. They made about the same examination of them as of the interior lands. And the witness further testified as follows:

Q. What, in your judgment, is the comparative, —what is the comparison of the character and quality in the first place, and then of the value, if you know, of the lands on the Straits, the Hoko and the Pysht

lands, that you observed, and the interior lands of the plaintiffs?

A. I do not hardly think I am competent to answer that question. A person passing along the County road necessarily gets very little knowledge of a country. You do not see very far into the forests, and the only thing that you know is what you see; and passing along a County road, that passed through good timber practically all the way; and on the Clallam slope the timber that we saw appeared to be a little larger and a little older growth than it did on the interior.

Q. What would be your judgment as to the difference in value as to the two, by reason of the character and quality such as you had occasion to observe it, and by reason of its location, the two classes of timber, that upon the Straits and that in the interior?

A. That is a pretty hard question for a person to answer with the limited opportunity to examine the timber that we had. We left Clallam Bay and went up through the timber there. The country was pretty rough that we were over. We ascended over on the divide there, and that divide was quite rough. As we got over the hill and got down in the Hoko valley, the ground was better, but the timber was not as good quality; but the ground was better, and all this enters into the value of the timber.

Q. You said the "Hoko" valley, you mean the Sol Duc; after you got over the divide and got into the Sol Duc?

A. Yes, sir, I mean the Sol Duc."

As to the relative value of the timber on the Straits and the timber on the interior the witness doesn't think that there was much difference in the hemlock because it has no present value anyway. Hemlock in Clallam County in March, 1912, was perhaps worth 40 cents per thousand. Hemlock at that time had no value. Timber buyers were not paying anything for hemlock. It had no value except perhaps in rare instances where a railroad passes through it and where there is an opportunity to mill it on the ground and load it on the car, but where it has to be logged

and put into the water and towed, it had no value at all at that time.

There has been no change in the market value of timber lands in the state of Washington in 1912, 1913 or 1914. The tendency has been downward all the time since 1910, a gradual depreciation. The depreciation of timber from March, 1912, to March, 1914, was about 15 per cent, and since March, 1914, there has been a depreciation of 10 per cent. Fir, spruce and cedar on the interior lands on March 1, 1913, had a market value of about \$1.00 per thousand.

On cross examination the witness testified substantially as follows:

He would not be willing to buy this timber from the examination that he made unless he bought it very cheap. He never examined the grades of the timber down there. His opinion was based upon what he saw on this trip of the timber and what he has always heard of it. He had not examined the cruises so as to form an accurate opinion about it. Witness had heard the testimony of other witnesses in the case. T. A. Rixon and Mr. Duvall, but his judgment of the values was not based upon such testimony. If witness examined the cruises and was accepting the cruises and reports as being accurate, honest, careful cruises, his mind might be a great deal changed; he is basing his testimony on what he saw down there on the road; he thinks they crossed the Sol Duc River. Witness was asked if they were off the wagon road to get off the trail at all and says: "Not to any extent."

William J. Ware, produced as a witness on behalf of the plaintiffs, being first duly sworn, testified substantially as follows:

He is 46 years of age. He resides in Port Angeles. He has been acquainted with the values of real property in Clallam County for some 25 years; has been engaged in the real estate and insurance business; has bought and sold lands, both agricultural and city property in Clallam County and knows the values of such lands for the period covering the years 1910 to March, 1914.

At the request of the plaintiffs he has gone over the values of lands in the business section of Port Angeles. Witness is referred to the valuation map of Port Angeles property, with values which he had placed thereon, and his examination directed to it.

MR. FROST: We desire at this time to enter an objection to this question upon the ground that it is not a comparison of property of like character and similarly situated as the property of the plaintiffs concerning which they are complaining in this court. And we desire to object further upon the ground that it does not appear that these plaintiffs with the knowledge of the fact that this property was under assessed, appeared within the time required by the Statutes of the state of Washington and entered a protest or asked the Board of Equalization to raise this property, as they had a right to do.

THE COURT: The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed. The property being so dissimilar I am inclined to think it would require a very strong showing of disparity in relative values to be made the basis of the court granting relief to the plaintiffs on this ground. I cannot say how strong that would be; so I overrule the objection.

MR. FROST: We want to make a record at this time and we want to argue that point perhaps more extensively at the conclusion of the case.

MR. EARLE: The appearances of the plaintiffs for the purpose of protesting, the different appearances have been alleged in the complaint and have been admitted by the defendant. One of the allegations with reference to the appearances was with reference to an arbitrary denial.

MR. RIDDELL: You do not allege that you appeared before the board and protested. You did appear before the board and protest, and that protest was denied, but you did not appear within the ten days within which the board is required to give notice. The statute provides that the board must give ten days'

notice of any raise of the property, and you did not appear, and until that fact is shown, it is absolutely immaterial, because they have not laid the proper foundation for it.

It may be understood that we object to all testimony concerning all other property except that of like character and similarly situated, and we have an objection to the ruling, and that it all goes in under our objection and exception.

MR. PETERS: That is our understanding.

THE COURT: Exception allowed. The witness produced a map, Plaintiffs' Exhibit "C," upon which he had already marked his estimate of the valuations of real estate in Port Angeles on March 1st, 1913, and on March 1st, 1914, and, placing said map on the easel in front of him, in response to questions by plaintiffs' attorneys, he read on said map in each instance the figures which he had placed thereon as aforesaid, showing his judgment of the value at the two periods in question of the property to which he testified and testified as follows, to-wit:

A. I should judge in the neighborhood of \$15,000.00. The value of that Lot 1, Block 1, Tide Lands west of Laurel Street, on March 1, 1914, was about \$25,000.

Q. Lot 2, in the same block in 1912?

A. In 1912, in the neighborhood of \$10,000.00.

Q. In 1914?

A. \$16,000.00.

Q. Of lot 3 in 1912?

A. There is very little difference, probably eight or nine thousand dollars in 1912.

Q. In 1914?

A. About \$14,000.00.

Q. Lot 4?

A. It would be the same.

Q. In 1912 and 1914 it would be the same as lot 3?

A. Yes sir, about the same.

Q. Lot 5?

A. That is the same, and lot 5 is the same.

Q. Lot 6?

A. Lot 6 was probably worth about five hundred dollars less than the other.

Q. What would that make the amount?

MR. PETERS: \$8500.00 for 1912 and \$13000.00 for 1914?

A. Yes sir.

Q. Mr. Earle: Lot 7?

A. That would be the same.

Q. Lot 8?

A. When you get to the end of that block it is rather cut up into smaller pieces and different than it shows on the map. If you take the lot as a whole—did you say Lot 8?

A. Lot 8, yes sir. Oh, that would be worth probably eight thousand dollars in 1912, and about twelve thousand five hundred in 1914.

Q. And lot 9?

A. Practically the same.

Q. And lot 10 on the corner?

A. Well lot 10, taken as a whole, of course, in actuality it is not held in one lot, but if it was it would be worth, about, on, I should say about ten or twelve thousand dollars in 1912.

Q. In 1914?

A. About \$18,000.00.

Q. Coming to the block of tidelands, on the other side of Laurel Street, the tidelands east of Laurel Street, lot 1 in block 1 of 1912?

A. That would be about the same value as lot 1, block 1 west of Laurel Street.

Q. \$15,000.00 in 1912, and \$25,000.00 in 1914?

A. Yes sir.

Q. Lot 2 in Block 12?

A. About \$10,000.00.

Q. And in 1914?

A. About \$18,000.00.

Q. Lot 3 in 1912?

A. There would be about a thousand dollars difference in their values.

Q. Which way, up or down?

- A. Down.
- Q. \$9000.00 you put in then in one instance and \$17000.00 in another?
- A. Yes sir.
- Q. And lot 4 in 1912?
- A. Well, possibly a thousand dollars difference, also.
- Q. Eight thousand dollars?
- A. Yes sir.
- Q. And in 1914?
- A. About \$16000.00.
- Q. And lot 5?
- A. That would be practically the same.
- Q. Lot 6.
- A. About \$8000.00 in 1912.
- Q. And in 1914?
- A. About \$15000.00.
- Q. Lot 7 in 1912?
- A. Well I should say about \$7500.00.
- Q. In 1914?
- A. About \$14,000.00.
- Q. Lot 8?
- A. Lot 8 would be worth about \$7000.00.
- Q. And in 1914?
- A. About \$13,000.00.
- Q. Lot 9, the corner lot there, what was that worth in 1912?
- A. In 1912, lot 9 was worth about \$12000.00.
- Q. In 1914?
- A. \$18,000.00.
- Q. The tide lands east of Laurel Street, lot 2, block 1, in 1912?
- A. Practically the same as lot 9 in block 1.
- MR. EWING: Lets have the figures. We can't refer back that way.
- A. About \$12000.00 in 1912 and \$18000. in 1914.
- Q. (Mr. Riddell) Lot 1, Block 2 tidelands east of Laurel Street is that right?
- A. Yes sir— no, that would be lot 9 in block 2, instead of lot 1, in block 2 that I referred to then.
- MR. RIDDELL: What was the valuation?

A. \$12000.00 in 1912, and \$18000.00 in 1914. That is lot 9, block 2, east of Laurel Street.

Q. (Mr. Earle) Has the order been reversed all through?

A. Yes sir.

MR. RIDDELL: I think that is wrong too. I think we have the values wrong in block 1. We started with Lot 1 but that is reversed.

WITNESS: Yes sir.

MR. EARLE: Then it is backwards. It is the other way. Numbering from 1 to 9, and the figures would be reversed.

THE COURT: The figures are reversed in lot 1, block 1 east of Laurel Street?

WITNESS: The figures are reversed in lot 1, block 1 east of Laurel Street; the figures would be reversed, and lot 1 would be lot 9 as I have testified.

Q. (Mr. Ewing) Are you testifying from actual knowledge and acquaintance with this property, or from a schedule on this property as you testified.

A. Well I made these figures from what I supposed to be actual knowledge, my own knowledge.

Q. Are you able to place in your mind, as the questions are put at you the exact property regarding which you are testifying.

A. Yes sir.

Q. (Mr. Earle) Which order is going to be right here?

A. Connig this way, we start with block 9, and going back with lot 1; that will take it in rotation.

Q. Mr. Earle: I will ask it in reverse order.

Q. Lot 8, block 2, tidelands east of Laurel Street was worth what in 1912?

A. That would be worth about \$8000 in 1912, and \$12000.00 in 1914.

Q. Lot 7 in 1912?

A. Lot 7 in 1912, in block 2, east of Laurel Street would be worth about \$6000.

Q. And in 1914?

A. About \$10,000.00.

Q. Lot 6 in 1912?

A. About \$5000 in 1912, and about \$8000 in 1914.

Q. Lot 5?

A. Lot 5, about \$3500. in 1912 and \$6000 in 1914.

Q. Lot 4 in 1912?

A. About \$2500. in 1912 and \$5000. in 1914.

Q. Lot 3.

A. The same.

Q. Lot 2?

A. About the same.

Q. And lot 1 is the corner lot, isn't it?

A. Yes sir, lot 1 would be worth about \$5000. I should judge in 1912 and about \$8000 in 1914.

Q. Coming on down now to the townsite of Port Angeles, in Block 14, going in numerical order, will you give the value of lot 1, in block 14 of the townsite in 1912.

A. About \$6000.00.

Q. And in 1914?

A. \$11,000.00.

Q. And Lot 2?

A. Lot 2 in 1912 about 3000.00.

Q. And in 1914?

A. About \$6000.00.

Q. And lot 3?

A. Well that would be the same.

Q. Lot 4?

A. About \$2500.00 in 1912 and about \$5500.00 in 1914.

Q. And lot 5?

A. About \$2500.00 in 1912, and \$5000.00 in 1914.

Q. Lot 16?

A. What did you ask about? you were asking about lot 5?

Q. Yes sir, but I jumped to 16?

A. Lot 16 was worth about \$4000.00 in 1912.

Q. And in 1914?

A. About \$7500.00.

Q. Lot 17?

A. Lot 17 was worth about \$4000.00 in 1912 and about \$8000 in 1914.

Q. Lot 18?

A. Lots 18 and 19 would be the same.

Q. And lot 20?

A. About \$8000. in 1912 and about \$15000. in 1914.

Q. Block 15 of the townsite, what would be the value of the lots, say in 1912?

A. 1912, \$12000.00 I should say.

Q. And in 1914?

A. About \$20,000.

Q. Lot 2?

A. About \$6000. in 1912 and about \$9500. in 1914.

Q. Lot 3?

A. Lot 3 would be practically the same.

Q. And lot 4?

A. Lot 4, 5 and 6 would be practically the same.

Q. At what prices?

A. They would be \$6000. in 1912 and \$9500. in 1914.

Q. And lot 7?

A. \$5500. in 1912 and \$9000. in 1914.

Q. Lot 8?

A. About \$5000. in 1912 and about \$8000. in 1914.

Q. Lot 9?

A. That would be the same.

Q. And lot 10?

A. About \$8000.00 in 1912 and \$12000 in 1914.

Q. Lot 11?

A. \$8000. in 1912 and \$12,000. in 1914.

Q. Lot 12?

A. About \$4000. in 1912 and \$8000. in 1914.

Q. Lot 13?

A. Practically the same.

Q. Lot 14?

A. Practically the same.

Q. Lot 15?

A. About \$4000.00 in 1912 and \$8500 in 1914.

Q. And lot 16?

A. \$4000. in 1912 and \$9000. in 1914.

Q. Lot 17?

A. Lot 17, 18 and 19, would be about the same as lot 16.

Q. And lot 20?

A. It would be about \$16000 in 1912 and about \$17500 in 1914.

Q. Take block 16 of the Norman R. Smith Addition, the corner of Front and Laurel Street.

A. The next block to all of those?

Q. Take lot 1, what was it worth?

A. Lot 1, about \$3500.00 in 1912 and about \$8500. in 1914.

Q. Lot 2?

A. Lot 2 would be about \$4000. in 1912 and about \$8000 in 1914.

Q. Lot 3?

A. About \$4000.00 in 1912 and about \$8500 in 1914.

Q. Lot 4?

A. About \$4500. in 1912 and about \$9000 in 1914.

Q. Lots 5 and 6.

Mr. Earle: If your Honor please, Mr. Darwin, the State Fish Commissioner is one of our witnesses and is here at considerable inconvenience and we would like to call him out of order if there is no objection.

MR. FROST: No objection.

THE COURT: Very well.

WILLIAM J. WARE recalled for further direct examination testified as follows:

By MR. EARLE:

Q. Go ahead with lots 5 and 6.

A. Lots 5, 6, 7 and 8 would be about \$5000 in 1912 and \$9500 in 1914.

Q. (Mr. Ewing) Are the answers intended to include your value on the lots with the improvements or the land alone?

Q. (Mr. Earle) Is your valuations given on the ground value alone?

A. On the land value.

Q. (Mr. Ewing) It does not include the improvements?

A. No sir.

Q. (Mr. Earle) Lot 9, in 1912?

A. I should say about \$12000.00 in 1912, no it would not be that much—about \$12000 in 1912, and about \$20000 in 1914.

Q. Lot 10 in 1912?

A. About \$10000 in 1912 and about \$17,500. in 1914.

Q. And lot 11?

A. About \$5000. in 1912 and about \$9000. in 1914.

Q. Lot 12?

A. About \$4500. in 1912 and about \$8500 in 1914.

Q. Lot 13?

A. \$4000 in 1912 and \$8000 in 1913.

Q. Lot 14?

A. About \$4000.00 in 1912 and \$7500. in 1914.

Q. Lot 15?

A. \$4000. in 1912 and \$7500. in 1914.

Q. Lot 16?

A. \$3500. in 1912, and \$6500. in 1914.

Q. Lot 17?

A. \$3500. in 1912 and \$6500. in 1914.

Q. Lot 18?

A. \$4000. in 1912 and \$7000. in 1914.

Q. Take block 17, the next block east there, beginning with lot 7, give the value in 1912.

A. A thousand dollars in 1912 and \$2500. in 1914.

Q. Lot 8?

A. About \$1500 in 1912 and \$3000.00 in 1914.

Q. Lot 9?

A. \$2500. in 1912 and about \$5000. in 1914

Q. Lot 10?

A. About \$3000.00 in 1912 and about \$6000.00 in 1914.

Q. Lot 11?

A. \$2500.00 in 1912 and \$5000. in 1914.

Q. Lot 12?

A. \$2000. in 1912 and \$4000. in 1914.

Q. Turning now to block 32 of Norman R. Smith's Addition, or subdivision.

MR. RIDDELL: Where is that?

A. It is between Carolina and Victoria and Race and Francis Streets.

Q. In this block 32, take lot 1 in 1912, what was the value?

A. Well it was worth very little in 1912; I think probably \$100. would be a good price.

Q. In 1914?

A. \$250.

Q. Could you make any approximate value running over the lots in that block, say between the corners and shorten this?

A. They are fractional lots from 1 to 8. They are on the hillside, and I am inclined to think it would be pretty hard to put any valuation on them.

Q. Turn to block 31 of Norman R. Smith's subdivision, and take lot 1 in 1912.

A. It was worth about \$4000. in 1912 and \$7500. in 1914.

Q. And lot 2?

A. \$3000. in 1912 and \$6000. in 1914.

Q. Lot 3?

A. Lots 2, 3, 4, 5, 6, 7 and 8 are practically the same, \$3000. in 1912 and \$6000. in 1914.

Q. Lot 9?

A. \$4000. in 1912 and \$8000. in 1914.

Q. Lot 10?

A. \$800. in 1912 and \$2000. in 1914.

Q. Lot 11?

A. \$700 in 1912 and \$1500. in 1914. That would apply to lots 11, 12, 13, 14, 15, 16 and 17 in block 31.

Q. Lot 18?

A. Would be about \$800. in 1912 and \$2000. in 1914.

Q. Take block 30, the next block east there, lot 7?

A. About \$1500. in 1912 and about \$3000. in 1914.

Q. Lot 8?

A. \$1750. in 1912 and \$3500. in 1914.

Q. Lot 9?

A. \$3000. in 1912 and \$5000. in 1914.

Q. Lot 10?

A. Worth about \$800. in 1912 and about \$1,500 in 1914.

Q. Lot 11

A. About \$500. in 1912 and about \$1000. in 1914.

Q. Lot 12?

A. About \$500. in 1912 and about \$900. in 1914.

Q. Take now block 2½ tidelands east of Laurel Street?

A. There is no valuation given.

Q. You place no valuation on that block?

A. No sir.

Q. Could you form an opinion of the tidelands east of Laurel Street blocks three to eight and a half?

A. No sir I could not form any opinion on that. There have been no sales in there of any kind.

Q. Come now to block 18 of Norman R. Smith's subdivision, what would you value lot 6 at in 1912?

A. Lots 6, 7, and 8 would be about \$1000. in 1912 and about \$2000. in 1914.

Q. Lot 9?

A. \$1500. in 1912 and \$3000. in 1914.

Q. Lot 11?

A. \$2000. in 1912 and 3500. in 1914.

Q. Lot 12?

A. \$1700 in 1912 and \$2500. in 1914.

Q. Block 19 of Norman R. Smith's subdivision lot one?"

It was thereupon stipulated that the witness Ware might prepare a tabulation of these properties with his estimates of their values and submit this table to stand as his own testimony, as Exhibit — in the case; also

a map prepared by the witness with values marked thereon which had been referred to in his testimony was admitted in evidence as plaintiff's Exhibit C.

The witness explains that he was three days making this map; that he was already acquainted with the vast majority of the property and such as he thought he did not know he went out and examined.

The property referred to by the witness on the map "C" was the central portion and business portion of the town of Port Angeles. There were then two wharves in the town, in 1913 and 1914, one at Oak Street and one at Laurel Street. The map "C" extends to the limits of the government townsite on all sides. There is no business property outside of the district indicated by the witness excepting scattering stores.

It was stipulated that the witness Ware was to submit a tabulation of his values of suburban properties in the same manner as of the urban properties and that this shall stand as his testimony upon these matters.

The witness is then asked by plaintiffs' counsel: "Where is the largest area of improved agricultural lands in Clallam County?"

To which the defendants made the following objection:

"We desire at this time to offer the same objection that we made at the introduction of testimony concerning the property in the city of Port Angeles, namely, that it is not like property similarly situated of the same character and description and also that these parties did not appear before the Board of Equalization and enter a protest as to the discrepancy in these estimates within the time limited by law, which would have permitted the County Board of Equalization to have made an increase in the value of this property, provided it was under assessed as to valuation."

THE COURT: Objection is overruled. I claim that there is nothing before the court now to determine what protest they did make."

MR. EWING: We are making the objection to make a record.

THE COURT: The objection is overruled.

MR. EWING: Note and exception.

THE COURT: An exception is allowed.

The witness answers that the largest bodies of agricultural lands is in the Dungeness and Sequim country. Witness is asked whether, in his business as real estate dealer, he has ever been familiar with the values of agricultural lands as well as those of urban properties, and he answers, "Yes, to a certain extent." He states that what is known as Sequim Prairie includes portions of Sections 17, 18, 19 and 20, township 30, range 3. The major portion of this land is irrigated land. The values of lands in section 17 run very uniform.

The witness says that he has been in the real estate business in Clallam County for 12 or 13 years. He did not reside in Clallam County all the time but was doing business there, and had occasion during that time to keep acquainted with the buying and selling of agricultural lands, as well as city lands and was familiar during that time with the fair market value of agricultural lands, that is from 1912 to 1914. The average value per acre of Sequim prairie land in March 1912 was from \$100. to \$125.00 per acre for improved property. In March 1914 it was not less than \$200. The same price would apply to a majority of section 18.

Referring to sections 19 and 20, in 1912 considerable of that land was and is yet unimproved. The market value of it in 1912 was \$30. per acre. In 1914 from \$50. to \$75 per acre. In section 19 the average value in 1912 of agricultural land which was under cultivation and which was not city property, was from \$30. to \$125.00 per acre. Lands in that section which were under cultivation were of an average value of \$125. to \$150. per acre.

The witness' testimony is referred to a map offered and admitted as Plaintiffs' Exhibit D. Referring to this map and to the unplatted portion of section 20, the witness says that on March 1, 1912 these would

average a valuation of \$150. per acre and in 1914 \$350. per acre.

Referring to section 32 or the north half of it, the witness says that this is timber land and was worth in 1912 about \$15. per acre and in 1914 \$35. per acre.

There was offered and received in evidence plaintiffs' Exhibit Q, being a tabulation of the witness Ware's opinion of the value of properties therein named, set opposite the assessed valuations of said properties for the years 1912 and 1914, the figures in red ink showing the witness' estimate of the value, it being admitted by counsel on both sides and the court, that such statements on the tabulation shall be taken as the actual showing of the Assessor's books as to the assessed values, and shall stand as the testimony of the witness as to valuations; but in this Exhibit "Q" the column headed "Assessed Valuation for 1910" and the first column "Valuation by Appraisal Committee" which is lined out in pencil, should be considered as stricken out as not competent.

Similar tabulation with reference to the assessment for 1912 and 1914 and the witness' valuation of agricultural lands was offered and received as plaintiffs' Exhibit "R", with the same stipulation as to the force and effect of the statements therein contained.

The witness Ware further testifies that there are not now and were not in 1914 any industrial plants in the neighborhood of Port Angeles, besides the Aldwell Power plant and Mike Earles' mill, and a salmon cannery, some shingle mills and saw mills. There were no large manufacturing plants in that neighborhood.

The witness states that the William Dick property, the Stewart property, McLaughlin, McAlmonds and Lotzgesell property, the James Dick property, Peter Cassarlary, Donald McInnis, Hart, Horn and Straits Live Stock and Dairy Farm property, are typical or representative of the highest type of agricultural lands in the Dungeness valley.

Cross examination of Mr. Ware:

The witness testifies that there was a marked

Insert after first paragraph on page 143 the following as part of Ware's cross-examination:

Q. You knew of the boom in Port Angeles?

A. Yes, sir.

Q. You know what a boom is?

A. Yes, sir.

Q. There was a boom there?

A. I should say there was.

Q. A regular rip-roaring boom, an old fashioned boom?

A. Call it anything you like.

Q. And you agree to call it the same thing I call it?

A. Pretty near it.

Q. Don't you know also from current report and your own knowledge that it was an entirely artificial boom, don't you know as a matter of fact that it was engineered from Seattle?

A. No, sir, I do not know that.

Q. Do you know where it was engineered from?

A. No, sir.

Q. Do you think it was spontaneous?

A. I do not know what you mean by "spontaneous."

Q. That it sprung up without any direct and contributing cause?

A. I do not think that.

Q. What do you mean?

A. Possibly it may have been produced without any afore thought on the part of the man who produced it, or men who produced it.

Q. It was produced by men, though?

A. I should judge so.

Q. When do you think that begun to the best of your judgment?

A. I think it begun in the fall of 1912.

Q. When do you think that it was just about over?

A. It is over now.

Q. Wasn't it subsided—

A. Yes, sir, in the fall of 1912.

Q. That is when it began. When do you think it had subsided?

A. It has been subsided ever since.

Q. When did the improvements in street grades, by way of street grading begin up there in Port Angeles?

A. I think in the spring of 1913; that is my recollection.

Q. Wasn't it in the spring of 1914, about a year and a half ago?

A. Yes, I guess it did.

increase in values in Port Angeles city real estate beginning before the first of March, 1912 and ending before March 1, 1914, and a subsidence which began prior to March 1, 1914. There was a boom in Port Angeles real estate beginning in the fall of 1912, lasting about sixty days.

The witness said that he moved to Seattle in the Spring of 1907 and returned to Port Angeles and was in business there in the winter of 1912 and 1913 and moved his family there in the spring of 1914; took up business there in November, or December, 1912. During the same time he had dealt in Clallam County property as well as Port Angeles property. He resided however in Seattle, but while residing in Seattle, his business was mostly in Clallam County property. He resided and did business in Port Angeles continuously after his return there in the fall of 1912. Witness was not in Clallam County at the time the assessment was made for the year 1912, but was just up there on occasional trips. There was a general appreciation of property all over Clallam County in the year 1914, over the year 1912.

Witness says that in tabulating these properties he valued them on the basis of a man owning a piece of property that he would sell, but does not necessarily have to sell, but that he would sell at a price that he has in his mind.

On re-direct examination the witness, Ware, testified substantially as follows:

That his comparative real estate business between the years 1907 to November, 1912 in the city of Seattle and in Clallam County, the far greater was in Clallam County.

"Q. (By Mr. Peters) Mr. Ware, during the time that you were residing in Seattle, in the years 1907 to November 1912, did you have occasion, or did you go to Port Angeles?

A. Occasionally, yes, sir.

Q. How frequently, about?

A. I could not say; some times I went quite often and sometimes I did not go for quite some time.

Q. How many times a month?

A. Oh, I did not go there—I could not tell you; I haven't the slightest idea.

Plaintiff then introduced and read in evidence the written depositions of R. W. Schumacher, S. J. Lutz, Benj. N. Phillips, James P. Christensen, J. A. Adams and William Garlick and it was stipulated between the parties that the tabulated statement of the assessment of the banks for the years 1912 and 1914 was the correct showing of these items.

H. DARWIN produced as a witness on behalf of the plaintiffs, being duly sworn, testified substantially as follows:

He was State Fish Commissioner, with his official residence in Seattle; was formerly employed as a reporter on the Seattle Times, newspaper. He had formerly visited Clallam County for the purpose of writing up the natural resources and development of that country, including the town of Port Angeles and the various other communities. During such visit and while investigating local conditions he conferred with certain of the county officers, among others one and possibly two county commissioners and the county engineer. This was in the year 1912. One of the commissioners was Mr. Hanson, who was present in court. The witness was taken on a drive over a considerable portion of the county with one or two of the county commissioners and the county engineer. They were showing the witness the roads then being constructed. They referred to the standing timber as they drove through it and discussed that feature as related to the development of the county. Mr. Hanson explained to the witness as they drove through the timber the fact that Clallam County was either the first or second in amount of standing timber of any county in the state of Washington. He said that the timber holders' policy over there had been such as to force the smaller settlers out and to make it very hard for them to maintain their holdings. That in times past the cruise of

the timber had been very low; that they had called one re-cruise, possibly more; that a second cruise of the timber was made which showed a much higher stumpage and much greater number of feet of standing timber. That the general policy of the timber holders had been along the lines of getting away with a small amount of taxes, and this on the whole had retarded development of the county, and that by their re-cruise or re-valuation of the timber lands the county had been able to greatly increase its tax roll and in that way they had been able to open new roads. Witness made a memorandum at the time and wrote a story embodying it. Mr. Hanson told the witness that the timber holdings of Clallam County were divided into about six or seven big groups; that the policy of the timber holders had been to shut out the little timber holders, which had been to retard the development of the county, by having their property assessed at very low valuations, and on the whole it had worked detrimental to the county. Mr. Hanson said that he thought the proper policy would be to tax the timber men so high that they would either give up their holdings or put in mills and saw it up into lumber.

"I think the question came up like this: That these holdings had been locked up; that there was no railroad development and that possibly there had been a gentleman's agreement between the railroads that for a certain length of time they would not build into the Olympic Peninsula and that the policy was to save this timber until such time as it would greatly appreciate in value; that is my recollection of how the matter came up; that they locked that up and was letting it stand there."

Q. What was their method?

A. Their methods of circumventing that was to force the cutting of timber, or force its sale.

Q. By what means?

A. The only power they had was taxation.

On cross-examination:

In this conversation Mr. Hanson did not single out the plaintiffs or other timber. His statements

applied to all large timber owners in the county. Mr. Hanson did not express any desire or intention to discriminate between the various large timber holders. The witness would not like to state that Hanson expressed any intention or design to assess the timber or timber land disproportionately or unfairly as compared with other property.

"Here is the position Mr. Hanson took: He took the position that the timber men had been getting a smaller cruise; that they returned their timber at less per thousand than there was actual timber on the land; that they had recruised that, and had thereby increased the number of thousand feet, or whatever it was, to the holders, and it jumped up. I forget now, I haven't read the whole article, but that it jumped from sixty to eighty a thousand, or forty to eighty a thousand, or something like that; but it had largely increased the per thousand to the acre or whatever it was, and that his idea was that they should be—they should also increase their tax rate on that and this would enable them to build railroads and highways and develop their county, and also force the cutting of the timber, or sale of the timber to other parties."

"Q. (Mr. Ewing) The primary object, the purpose, so far as it was disclosed by his conversation with you was to equalize the taxes, wasn't it? Wasn't that the first thing that he had in mind, and wasn't that the impression that the timber owners had not paid their share of the taxes, and that it was his purpose to put the timber owners on some basis so that the taxes would be in proportion to other property in the County?"

A. You keep bringing in mind that he spoke about "other property"

Q He spoke about the taxes of the timber being less than they should be at a fair valuation, didn't he?

A. That is it.

Q. And the only purpose that he expressed to you in his conversation was to bring the taxation of the timber men up to what it ought to be.

MR. PETERS: That is objected to. What his idea of what it ought to be.

A. Nothing more than that?

Q. That was the purpose of the recruise?

A. And by doing this he sought to bring the other propositions about of forcing them to either cut their timber and bring in mills or part with it. That was his idea, what the result would be by this action.

Q. Was there any intimation in anything he said to you of an intent to tax the timber men higher than they equitably should be taxed by the taxing authorities of that county?

A. I would not want to say if there was any such intimation, not higher than he thought they ought to be taxed.

Q. The conversation started primarily on the matter of getting roads, didn't it?

A. We were particularly discussing good roads. You read the article. We were discussing everything.

Q. I got that intimation from the article, that you were discussing good roads?

A. We were discussing industries, good roads, schools, churches and everything that goes into community life.

Q. (Mr. Frost) The intent and purpose of Mr. Hansen's remarks were to indicate a desire for better roads and better conditions, and a little further advance along the highway of civilization, wasn't it?

A. Well I think that is correct, yes sir.

RE-DIRECT EXAMINATION

BY MR. PETERS:

Q. Mr. Darwin as I understand, you wrote up this article a couple of days after you had been to Port Angeles?

A. I said it may have been two or three days or may have been two weeks. My custom was to stay out a week or such gathering data, and then return to my office and prepare it.

Q. Since that time, between that time and the time Dan Earle, the counsel here, spoke to you about

it, and told you he had seen the article and asked whether you would be a witness in the matter, or told you you would be subpoenaed in the matter, you never thought of it from that time to this, did you?

A. I never did.

Q. You did not have the matter called to your attention in the meanwhile did you?

A. I never saw the article. I think I spoke to Mr. Earle about a year ago. He asked me about the date of it, but the article itself I have never seen.

Q. The article was the expression two days after the occurrence of what your belief about the matter was at that time wasn't it?

A. That is correct.

Q. Now in that article, did you not state this: "Hansen favors"—

MR. FROST: We object to that.

MR. PETERS: We have a right to what he gathered from it all. This is his memorandum. It is not a newspaper statement only.

MR. FROST: The witness has read this article for the purpose of refreshing his memory. We object to this. He has a right to testify to any conversation he may have had with Mr. Hansen, but we think that this is improperly offered in evidence.

THE COURT: The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

MR. EWING: There is this further impropriety about it, that counsel is reading just an excerpt from that article. The Court cannot get the full purport of it unless the witness reads the whole article, which is seven or eight columns long.

THE COURT: The Court is going to be actuated by what the witness says, and not what counsel reads.

MR. PETERS: I would be glad to put it all in if you desire it in.

Q. Mr. Darwin, you said in this article "Hansen favors a policy of taxing the timber holders so high that they will find it unprofitable to long keep their vast tracts off the market"?

A. Yes sir.

Q. That was the truth as you then understood it and remembered it, two days after the occurrence, was it?

A. Yes sir.

Q. (MR. RIDDELL) That was your construction that you put on the conversation that you had with Mr. Hansen?

A. That is correct sir.

MR. FROST: Mr. Darwin isn't it rather permissible for a newspaper reporter in writing an article of this kind to exercise his imagination slightly in order to make the article a little more readable?

A. Well, in that kind of an article I do not know that it is called on for any play in the imagination. I do not think he wants to exercise his imagination. He might try to exercise his ingenuity in the construction of the phrases, but not necessarily his imagination in writing a news article like that.

Archibald J. Fiskén, a witness produced by the plaintiffs, being sworn, testified substantially as follows:

Has resided in the city of Seattle for 31 years; is engaged in the business of mortgage loans, insurance, appraising property for purposes of loans or insurance; has been engaged in this work since 1902; went to Port Angeles recently and appraised the improvements on Lot 9, Block 1 of Tidelands West of Laurel Street. On the corner there is a two story, part basement concrete building. It is what is termed a store and office building. The first floor is occupied as a retail store and the second floor is divided into offices. In addition to this concrete building there is a row of frame buildings directly north of the concrete building and north of that there is a corrugated iron building. "I should say the value of the improvements would be \$21,800." That property is known as the Morse block. Taking the present valuation at the figures of \$21,800, and allowing for the usual depreciation, the value on March 1, 1912, would be \$22,000.

The witness also appraised Lot 10, Block 16 of

the townsite, the Norman R. Smith subdivision and appraised the value of the improvements on March 1, 1914, on that lot, as \$20,500. The value of the improvements on March 1, 1912, would be \$20,600. This is known as the Aldwell block. It is a two story and basement mercantile building built of stone and a small frame building in the rear.

On cross examination the witness says that he did not examine the newly constructed buildings. Witness says that in appraising the buildings he took into consideration the class of buildings, material, size and occupancy, adaptability to the location and the condition in the interior and exterior. The witness endeavored to show the replacement value of these buildings less depreciation. He made the appraisal for the purposes of this suit and for that alone. The witness does not know what any of the buildings which he has valued would sell at.

With reference to the valuation of the Morse Building on the corner of Front and Laurel Streets, the valuation included all the buildings on the lots. The concrete building itself, the witness had valued at \$18,000.

THOMAS J. ALDWELL, a witness on behalf of the plaintiffs, being duly sworn, testified substantially as follows:

That he has been a citizen of Port Angeles about 25 years, engaged in the real estate and insurance business and is Vice President and General Manager of the Olympic Power Company, an institution for generating electricity to serve the peninsula.

Plaintiffs produced a photographic copy of the appraisal of certain properties in Port Angeles, signed by the witness and others, and introduced it as Plaintiffs' Exhibit E. The witness admits that it is a true copy of the original paper, and that he has searched diligently for the original and been unable to find it. Witness admits that he made the statement and that the signatures to the original are genuine and that the witness may have sent it by letter or by hand

to a man by the name of Grasty sometime in May, 1914. This he probably did. Grasty was in Port Angeles at that time for the purpose of giving some money to build the Elks Building. The witness discussed values with Mr. Grasty and he would not deny that he had given him this paper.

Asked as to whether this was not the witness' best judgment as to the value of these properties at the time, he says that the statement was made up for the sale of a ten year bond and it was an optimistic statement. It was to go over a period of ten years. Lewis & Wiley had obtained a contract for filling in certain tide lands and this was to help sell the bonds, that they were to issue upon the tide lands.

"Q. And this representation was made at that time of your belief of the fair value of these lands to be given these people who were to buy the bonds? Is that not a fact?"

A. Well, as I say, it was given in an optimistic vein and some of the signers objected to signing it. I believed that the property would be worth it and that nobody would be hurt by it. In response to subpoena, witness produces a statement; says there was a detailed statement made out but that the detailed statement was never used. Witness is shown a paper, which was afterwards identified as Plaintiffs' Exhibit "E", and he said they never used that one; that there was some objection to it on the part of the signers and they reduced it three hundred thousand dollars; he thought Exhibit "E" was recalled; Lewis, Wiley & Morse did not have one and witness does not have one; the witness made up the statement and got the men to sign it whose names are on it; it was not an appraisal committee; it was based on one or two sales that might have been made; it was an optimistic statement; the witness knew the property would pay the bonds and the valuations would be around there and there had been one or two sales of property on which he could base this and it was given out for the purpose of selling those bonds.

And the witness gave it to Lewis & Wiley.

Upon the offer of this Exhibit E in evidence by the plaintiffs, the defendants objected, whereupon an argument followed, and defendants cross examined the witness, as to the admissibility of this paper, he testifying substantially as follows:

That prior to the time of his making this statement an investigation had been made by the bonding house of people in Port Angeles and various officers had been written to with reference to the values of these properties, and upon the values which they obtained in this manner objections were made to taking the bonds, and the bonding house had sent a man down to make their own investigation. Thereupon Lewis, Wiley & Morse, the contractors, appealed to the witness to get a statement from the witness and other signers of this statement Exhibit E, for the purpose of selling the bonds.

The Court thereupon held that the plaintiffs might examine the witness upon his own statements as they appeared upon this Exhibit E and thereupon the defendants admitted the competency of the witness Aldwell, as a real estate expert.

The witness' attention being referred to this Exhibit E and asked as to the value of Lot 1, Block 1, Tidelands east of Laurel Street, says:

"I would like to be informed if I am to testify of my value my idea of it now, or what I might have had at that time. The conditions have changed so that my testimony as given now would not be 40 per cent of what it was at that time. Looking back at it now it would be completely different to what it might have been had I given it at that time, because I could not see that the boom was just a bubble and did not last. If I would give my present opinion of the values it would not be what it would have been had I signed the document at that time. It would not be anywhere near it."

"Q. What in your judgment was the fair market value of this lot that I refer to in February, 1914?

A. As I would have looked at it then or now?

MR. PETERS: Q. I am asking you to tell me

what, in your judgment as a real estate man of twenty years experience, was the value, the fair market value of that property on February 1st, 1914?"

The witness then gives his values of lots in this list, Exhibit E as follows:

Lot 1, Block 1, Tidelands west of Laurel St., as of February 1, 1914, \$12,000 to \$14,000.

Lot 2, \$10,000.

Lots 3, 4, 5, 6, 7, 8 and 9, about \$8000 each.

Lot 10, about \$11,000.

Lot 1, east of Laurel St., \$8500.

Lot 2, \$7000.

Lots 3, 4 and 5 would be worth about \$7000 apiece

Lot 6, \$7500.

Lot 7, \$7500.

Lot 8, about \$9000.

Lot 9, about \$13,000 to \$14,000.

In Block 2, east of Laurel St., Lot 6, \$1500 to \$2000.

Lot 7, \$2000 to \$2500.

Lot 8, \$2500 to \$3000.

Lot 9, \$6000 to \$6500.

Block 14 of the townsite of Port Angeles, Lot 1, \$6000.

"A. Those lots—I would like to get it clear, Mr. Peters, in my mind. Am I testifying to what they would have sold for at the time if a lot were sold, or as I look at it now and see the value. I want to get it clear in my mind. In the town of Port Angeles now it is very hard to get a valuation and what to base a valuation on, and I want to get it clear, because I do not want to mislead any person.

Q. (Mr. Peters) My impression is that this is the interpretation I put upon it; you are answering what was the value in your mind of the market in Port Angeles in February of 1914; not what you look back at it now, what it may have been sold for or may not, but what a market buyer in Port Angeles in February of 1914 would have considered it worth.

A. That is rather hard, because we would get a buyer and we would sell him one lot and would I

base my value on what I would sell that for or on what you could sell another lot for? I want to know what I will base it on.

Q. I am asking you what those lots would have reasonably sold for as the market stood under the conditions existing in February of 1914.

THE COURT: Give him a definition of what is the market value. That may assist him.

Q. (Mr. Peters) The market value of property of this character would be the price at which property would be sold at the time referred to, February 1st of 1914, where the seller was willing to sell, but did not have to sell and the buyer was willing to buy but did not have to buy, was able to buy.

MR. EWING: Another test in the language of the statute, that price at which the property would be taken by a creditor from a solvent debtor in the payment of a debt.

A. I want to get it clear. I do not want any person to think I am a poker dealer in Port Angeles. We have these little booms and we sell a lot and dupe some person, and there are so many sold, and whether we could sell any more or not, that is a question; and before I go over all this business I want it clear in my mind; I want to see what I am testifying to. (Discussion between counsel.)

A. I could base it on what I bought property at or what I sold property at. I sold a few lots at a fair value and I bought some at a good deal cheaper value. I am under oath and I am in a very peculiar position. I want to give exactly what I believe to be the true value, and it is hard for me to determine in my mind.

Q. (Mr. Peters) I take it, that the value, the market value would not be made up of what you made a sale for or that you took property for; but upon what, in a number of sales, constituted a market at that time. So, if I would come to you in February of 1914 and asked you what such a lot was worth you would tell me from the existing market as of that day what it was.

A. I will say, in response to that, that we had

a movement from September to about somewhere between January and February, and since then you could not sell property at anywhere near the value.

Q. I want to take the valuation that was put upon that at the time of the movement, if that movement lasted beyond February, and it did, didn't it?

A. It lasted somewhere between September and January and February.

Q. And those values were made up of the market as it existed in February?

A. Well, as I say, these figures were made on an optimistic vein.

Q. But they were based in your judgment on the market value of property at the time, were they not?

A. You could have sold two or three lots at that time; but, in Port Angeles, you could sell two or three lots and you could not sell another lot if you sold at a quarter of the price. It is very hard for me to get a basis on which to give valuations in a town like Port Angeles. (Discussion between counsel.)

A. As I understand it, I am testifying to what the value would be at that time under the conditions then existing.

Q. Exactly."

Lot 2, \$3000 to \$3500.

Lot 3, \$2500 to \$3000.

Lot 4, \$2500.

Lot 5, \$2500.

Lots 16, 17 and 18, Block 14, \$4500 to \$5000 each.

Lot 19, \$7000.

Lot 20, \$9000.

The witness is handed a letter dated April 29, written to Mr. Grasty and a letter of May 15, 1914, also written to Mr. Grasty, the genuineness of which he admits. These letters were admitted in evidence as Plaintiffs' Exhibits F and G over the objection of the defendants on the ground that they are hearsay and are not admissible until the witness has been connected up with the conspiracy, or an offer on the part of the plaintiffs so to connect him up is made by the

Court. Exception was taken and allowed to the ruling of the Court.

The witness is then asked the following question by the plaintiffs' counsel:

"In this letter to Mr. Grasty of April 29th, 1914, Exhibit E you said to him "I am enclosing you a list of the valuations gotten up and certified to by both our banks and several other prominent citizens as being a fairly conservative valuation of the property in our business district. A Committee was appointed and a list of values made for the purpose of getting as near as could be the actual valuation of the property in this district, and the necessity for this was occasioned to a considerable extent by the fact that the assessed valuation on this property was so low that it was considered that it might work a hardship on the city in disposing of the improvement bonds. The assessed valuations in this city have been kept down as low as possible." It says here "Law as possible." I presume that is a clerical error?

"A. Yes sir, it should be low.

Q. (Continuing) "As low as possible for two reasons: first to stop any too excessive improvement, and secondly: to save the extra proportion which we would have to pay, of the state and county taxes. The assessed valuation will be materially increased this year.

I am giving you this information as after thinking over our former conversation, I think it will be most interesting to you to know the real facts. In this connection, I might say that these improvement bonds amounted to about two hundred thousand dollars and were slightly in excess of the assessed valuation, but the bond buyers carefully looked into the values of the property back of the bonds, and after a thorough investigation, the Asset Financing Company purchased these bonds for ninety-six cents. Peabody Houghteling made an offer of ninety-five cents, and probably would have given better, but the other people had secured the purchase. I understand that they have since resold these bonds at a fair profit." * * *

"During the past two or three years, the values

of the property in this city and vicinity have increased considerably, but there has been a substantial reason for the increase. One reason being that the Olympic Power Company have installed a hydro-electric plant, at a cost of one million three hundred and fifty thousand dollars. With turbines and generators capable of a capacity of eight thousand net electrical horse power. In this connection I am enclosing you a circular of Peabody-Houghteling & Company, describing the bond issue which they took on this plant, which gives a further description of it.

The Puget Sound Mills & Timber Company have just completed the construction of a mill which will cut four hundred thousand feet of lumber per day. The insurance surveyors who have just examined it, say that it is the best equipped mill on the Coast. This mill alone will give employment to about eight hundred men directly and indirectly. Besides this mill which has just been completed the Merrill & Ring people, who are large lumbermen, and the Lacy people, who also have large holdings, are starting in to log their timber, and are seriously considering establishing mills at Port Angeles."

MR. PETERS: Gentlemen, I will mark the parts of this letter which I read. I do not think what I omit has any bearing on the matter, which I wish to refresh his recollection on, but it is at your convenience at any time. I mark with a pencil what I read.

You further say: "Our citizens here also, I might add, donated a greater portion of the Puget Sound mill site, raising locally, thirty-five thousand dollars for this purpose, which makes one hundred and twenty thousand dollars as a bonus which our young city raised, inside of two months. When this railroad is completed to its eastern destination, which will be at first by way of ferrying to Seattle by either Oak Bay or Port Ludlow, and when completed it will help vastly in the development of our county."

You previously stated, to recall your recollection to this, you previously stated in the upper portion of that letter that eighty-five thousand dollars bonus was

raised for the Milwaukee, making a total of one hundred and twenty-Thousand.

Now I read you your letter of the 15th of May, 1914, as follows, directed to Mr. Grasty at Portland.

"Dear Mr. Grasty: I am in receipt of your letter forwarded here from Seattle, and am here for a day or two. I have not the date of the property valuations here but will send them to you on my return to Angeles. They do not cover any improvement, but are based on the value of the ground alone. Lot 10, block 16, for instance, where the stone building is, is worth fifty thousand dollars; and the value on the list is away under that. I note what you say about the appraisal and I hope you may be successful, in getting the loan, as it is as good as a U. S. gold bond. The repayment being as certain. If there is anything I can do, address a duplicate letter to the Arctic Club, Seattle and one to Angeles. I leave here tomorrow. Yours very truly, Thomas J. Aldwell."

Refreshing your recollection with these statements made of April 29th and of May 15th, 1914, I will ask whether you desire to qualify your testimony at all that you gave with reference to that list of property, as to whether that was a conservative valuation that you placed upon the property, or, as you stated yesterday, before these letters had been called to your attention, whether it was an optimistic value.

A. It was an optimistic value.

Q. Having read this here, that statement here that the lots in the list are way undervalued, or to be absolutely accurate I will read what you say "and the value on the list is way under that"; what did you mean by that statement, that "the value on the list was way under that"?

A. What I presume I meant from the wording of the letter was that the list was valued under what I stated there.

Q. Yes sir; in your views in May 15, 1914, the values were still as high as they were in February, 1914?

A. That was not my view. I wrote that letter

to get a loan for the Elks. That was an optimistic letter.

Q. That was an optimistic letter?

A. Yes sir.

Q. But it was your judgment at that time and your belief that the stone building that you referred to,—that was your building was it not?

A. Yes sir.

Q. That was the building that was testified to by Mr. Fisken yesterday. Were you in the court room then?

A. I was not in the court room, no.

Q. It is what is known as the Aldwell Building is it not?

A. Yes sir.

Q. When was that built?

A. That was completed in 1906, I think.

Q. And it was substantially the same shape in March, 1912, as it was at the time when this letter was written?

A. No sir, no sir. That building, the foundation all went out under it and I had to put,—I have had to put irons all through the building to hold it together.

Q. That is what I wanted to find out, when was that done?

A. That was done shortly after it was built.

Q. When was that?

A. That was about 1908, I think.

Q. But what I mean is, the building was substantially in the same shape in 1912, 1913 and 1914 as it was at the time you wrote this letter?

A. Yes sir, it was.

Q. And at that time you valued your property at fifty thousand dollars?

A. No sir, I did not. I said so in the letter, but I did not.

Q. You said so in the letter, but you did not?

A. Yes sir.

Q. But you did not value it at that?

A. No sir.

Q. What do you recall as to the circumstances now and the market value as it existed at that time in May, when you wrote this letter, what do you think was the fair market value of your building?

A. I sold that building and another building.—

Q. I am asking you what you think was the market value of it at that time; not what you may have sold it for subsequently.

A. What date was that?

Q. That was in May, 1914, or take it, in March, 1st, 1914.

A. I sold it before that.

Q. You had already sold it?

A. Yes I had already sold it.

Q. How long before that had you sold it?

A. Just shortly before that.

Q. Had you sold it before the assessment of March, 1912?

A. No, not before the assessment of 1912.

Q. I mean 1914, had you sold it before that assessment?

A. Yes sir.

Q. Before we leave this letter and return to the list, you state here that the Olympic Power Company had installed a hydro-electric plant at a cost of \$1,350,000 with turbines and generators of a capacity of eight thousand net electrical horsepower." When was that completed?

A. Which?

Q. The hydro-electric plant of the Olympic Power Company.

A. That was completed in the fall of 1914. The plant—a blow-out occurred as I recall it, about October 30, 1912, and we made a blast in November 4th, 1913, and then we completed the work. We discharged the engineer, and completed the fill of the dam some time in the latter part of 1914.

Q. In what stage of completion was it in March, 1914?

A. We were generating power.

Q. It was substantially completed, but you were

running it along to the fall sometime trying it out before you discharged the engineer?

A. No sir; we were making our fill of the dam. We were completing the filling of the dam.

Q. And this valuation that you placed in here, in May, of one million three hundred and fifty thousand dollars was substantially correct, was it not?

A. Well, I should think about probably four or five hundred thousand dollars of that was in the blow-out, occasioned by the blow-out. We had a blow-out under the dam.

Q. Not after that date?

A. No, no. I say that is what it cost.

Q. That is what you had to do to duplicate your work?

A. Yes sir.

Q. So that you would take off that for a new construction or replacement of a similar plant probably four to five hundred thousand dollars?

A. Yes sir.

Q. Which would reduce your estimate from one million three hundred and fifty thousand to eight hundred thousand?

A. Yes sir.

Q. That would be a fair estimate in your judgment of the value on that date, in March, 1914?

A. Well it is pretty hard to arrive at what would be a fair estimate, because a client—it depends on how you arrive at the conclusion, or whether you arrive at what it was paying or what it cost.

Q. It cost you that?

A. Yes sir, with the engineering and everything it cost approximately \$650,000 somewhere around that.

Q. Plus this duplication expense that you had to go to by reason of this blow-out?

A. Yes sir; it probably cost more than that. I have never figured out just what the blow-out did occasion us. It set us back for a year.

Q. How long had you been in operation and furnishing power?

A. We turned on the power in January, 1914—

December, 1913 and January, 1914, as I recall it.

Q. Not to go into detail at all, but will you just state to the court what district is covered generally and was at that time by your plant as to service, how far away from Port Angeles?

A. We went to Bremerton.

Q. The Navy Yard over here?

A. Yes sir. I might say with interest and everything our plant cost even more than that.

Q. There wasn't any large expenditure in connection with that plant from that time through the year 1914, was there?

A. No, not very large, except until 1914. It was not sure that our dam was sealed. The dam was uncompleted and in October, 1914 we completed sealing the dam.

Q. And that you have taken into contemplation in the five hundred thousand dollars which you allowed?

A. I would not say it was. I have never checked over, just checked over what that did cost us.

Q. You are an officer of that company?

A. Yes sir.

Q. What officer?

A. Vice President and general manager.

Q. And you were such at that time?

A. Yes sir.

Q. During this entire construction?

A. Yes sir.

Q. You are thoroughly familiar with its holdings and the values, cost and so forth?

A. Yes sir; but as I say, at that time the dam not being completed or sealed we did not know whether we had a completed plant or not.

Q. I show you a statement made by you to the Public Service Commission for the year ending December 31st, 1914, in connection with that plant; will you refresh your recollection with reference to the items of that?

A. That is our report, yes sir.

Q. That is your report?

A. Yes sir.

Q. That is made under oath, is it?

A. Yes sir.

MR. PETERS: That would be identified as proposed Exhibit H. (handing exhibit to counsel for defendant.)

MR. FROST: If Your Honor please this is a report made to the Public Service Commission of the State of Washington, for the year ending December 31st, 1914, and is subscribed and sworn to on the first day of March, 1915. There is nothing in dispute before this court.

THE COURT: I do not understand that it is offered in evidence. He submitted it to the witness to refresh his recollection. That was the beginning of the question.

MR. PETERS: That is all the intent of it at this time.

MR. FROST: All right.

Q. (Mr. Peters) Your transmission lines as I understand you to say were all in by March 1st, 1914 and you were transmitting power then?

A. Yes sir.

Q. Referring to the item here under the head of Assets Tangible, land used in the operation of property you have listed here at \$1,530,517.34.

A. Yes sir, listed as what?

Q. Land used in the operation of property, \$1,530,517.34.

A. Yes sir.

Q. Buildings and fixtures \$506,742.?

A. Yes sir.

Q. Was that a fair estimate in your judgment that you made.

A. Well we were apportioning the losses that we had over everything.

Q. But that was your fair judgment in representing to the Public Service Commission the cost of that property?

A. That was the way we had to absorb the promotion, stock and everything in that way.

Q. You absorbed the promotion stock?

A. Yes sir.

Q. But you say here, what the Tangible Assets were, that the lands used in the operation of the property was \$1,530,517.

A. When we formed the company we sold the right and everything to the company for I think a million in stock.

Q. How much of that land was outside of Clallam County?

A. That land is practically all in Clallam County. I may say that land is really no different to the land that they assessed at twenty or thirty dollars an acre. Of course it is the power site. It is what a person would consider a power site.

Q. It is assessed, as I understand you, for the years 1912, 1913 and 1914, at thirty dollars an acre?

A. Somewhere around there.

Q. In order to identify that in a list will you state where this land is located, your plant?

A. That land is in sections 15, 21, 22 and 28, township 30, range 7.

Q. The hydraulic power plant equipment you give at \$245,562.88; the transmission system lines you give the valuation of \$261,335.56; the distribution lines at \$16,720; transformers \$2,814, a total cost of plant and equipment you give at \$3,415,526.94 was that shown on your books, the books of the power company?

A. Yes sir.

Q. These are the values at which the property was carried on your books?

A. Yes sir.

Q. Did the assessor of Clallam County in getting the assessments for 1914 ever have access to your books?

A. No sir.

Q. Did he ever ask you to see them?

A. No sir.

Q. Did he ever ask you for an assessment list?

A. Yes sir.

Q. Having refreshed your recollection with this statement Mr. Aldwell, I will ask you what in your judgment was the cost, value at the time, March, 1915, of the property that you referred to in this letter of yours, April 29th, 1914, as being March 1, 1914, what was the cost value at that time of this property which you referred to in your letter as being worth \$1,300,000.

MR. EWING: That is objected to because the cost is not the test. The cost has nothing to do with it. It is the reasonable market value.

THE COURT: Objection overruled.

MR. EWING: Note an exception.

THE COURT: Exception allowed. It may not be the controlling test, but it throws some light on the question of value.

Q. Will you state, having refreshed your recollection with the statement made to the Public Service Commission for that year, was that estimate of \$1,334,000 not a fair statement of the cost as of March, 1914, of that plant?

A. It was including interest. All the money that we had expended, if we paid interest, with all the money expended it was low.

Q. In that letter you refer there to the plant—in this letter of April, 1914, you refer here to a plant of the Puget Sound Mills & Timber Company in which you say the Puget Sound Mills & Timber Company have just completed the construction of a mill which will cut four hundred thousand feet of lumber per day. The insurance surveyors who have just examined it, state that it is the best equipped mill on the Coast. This mill alone will give employment to about eight hundred men directly and indirectly. That is your opinion as to the Michael Earles property?

A. Yes sir.

Q. When was that completed with respect to March, 1914?

A. I could not recall when that was completed.

Q. About when?

A. I could not say. I think it was somewhere

around that time; but you can get competent evidence on that and I may be mistaken on it.

Q. If you direct anyone—

A. If I said it in that letter I presume it was.

Q. What I want to get at—

A. If I said it in that letter I presume it was, but I would not be certain.

Q. You stated it was just completed April 29, 1914.

A. Yes sir.

Q. Wouldn't it be your judgment it was completed by March 1st, 1914?

A. If I have it there.

Q. And you say it will cut four hundred thousand feet a day?

A. Yes sir.

Q. You are more or less familiar with that plant?

A. Yes sir, I have been through it several times.

Q. Been through it a great many times?

MR. RIDELL: Several times he said.

A. I have been through it several times.

Q. (Mr. Peters) You have been through it several times?

A. Yes sir.

Q. What would you say was the cost of that mill that cut four hundred thousand feet a day?

A. I do not know; I never had a mill built or had anything to do with it.

Q. Any idea of the value of that mill at that time?

A. No sir, I would not say. I would not be competent to judge of the value of the mill.

Q. You say here that "our citizens here, I might add, donated a great portion of the Puget Sound Mill site, raising locally thirty-five thousand dollars for this purpose. Did you contribute to that?"

A. Yes sir.

Q. Do you know yourself whether they purchased the land at thirty-five thousand dollars and gave it to the Michael Earles people, the land for the site?

A. They give them thirty-five thousand dollars, but I do not think it was all paid. I think a great quantity was not paid.

Q. And they gave them that in land?

A. They raised thirty-five thousand dollars. I never called them up. I know I paid mine. I understand a great number did not pay their part.

Q. Was that for land?

A. Yes sir.

THE COURT: Was it thirty-five thousand in land or thirty-five thousand in money?

A. We raised thirty-five thousand to buy the site; how much of that was paid I do not know.

Q. (MR. RIDELL) Who was the money paid to?

A. It was a subscription, the Commercial Club Committee.

Q. Was the land acquired by Michael Earles or the company?

A. Mr. Earles got the land, whatever it cost; what it cost I do not know.

MR. FROST: We object to this on the ground that it is immaterial and irrelevant. It is encumbering the record with a lot of immaterial matter that this witness is not competent to testify on.

THE COURT: It may be material. It is hard to tell whether it is material or not until the whole matter is developed. The objection is overruled. Exception allowed.

Q. Do you know what land was occupied by the Michael Earles plant in March of 1914?

A. I could show you on the map.

Q. If you would give us the description because I want to compare that.

A. I would say mine is not competent evidence; that is the best of my knowledge.

MR. RIDDELL: Do you know where it is?

A. I know about where it is.

MR. EWING: The Port Angeles map is not here.

MR. PETERS: Well we will wait until it comes.

EXAMINATION BY MR. EARLE

Q. Mr. Aldwell, will you indicate more definitely just the description on which your plant is located, in what forty?

A. It is located in Section 15, township 30, range 7, I think in the north half.

Q. Was the plant excluded, your dam and backwater excluded excluding the backwater, does the plant cover more than forty acres?

A. Well, the plant would not; but I could not tell just exactly what forty it is on. But is somewhere in the middle of section 15, township 30, range 7; somewhere in the middle of the northwest quarter.

Q. You think it is in the northwest quarter? Is the southwest quarter of the northeast quarter of section 16, township 30 range 7 the forty on which the plant is located?

A. It may be.

Q. You are not sure as to that?

A. I have never looked it up in recent years what forty it was on. I think it is, I would not swear.

Q. As far as you know it is on the southwest of the northeast?

A. If you looked up I will admit that.

(MR. RIDDELL) He has not looked it up and does not know any more about it than you do.

A. If you looked it up I will admit it. I would not swear what forty it is on.

Q. Is it the only forty acres in Section 15, township 30, range 7, on which you have improvements?

A. Yes sir, I should think so. We have a dwelling, perhaps on another, but I think that would be the only one. Since we started the construction I would not swear what forty it was. I never looked it up.

EXAMINATION BY MR. PETERS

Q. Mr. Aldwell, I overlooked a question. I overlooked questioning you about this. You handed me yesterday, in response to a subpoena requesting you to bring forward the paper, this paper which I will have marked plaintiff's Exhibit I for identification, and this yellow sheet, which is plaintiff's Exhibit J

for identification. This one which I refer to is Exhibit I for identification, which reads as follows:

MR. RIDDELL: We object to encumbering the record with that. Counsel cross examined the witness about that to his heart's content yesterday and the court ruled on it. There is no necessity to go into the matter again.

THE COURT: Objection overruled. Exception allowed.

Q. Mr. Peters) Reading. "We the undersigned residents and property owners of Port Angeles, Washington, being conversant and familiar with the values of property in Port Angeles, hereby certify that we have carefully appraised all the property shown on the blueprint which is attached to this certificate and made a part hereof, that we have divided the property into four districts, being numbered 1, 2, 3, 4, as shown on said blueprint, and that to the very best of our judgment and belief, the true and actual total value of each district is as follows, to wit:

District No. 1 \$761,700; district No. 2 \$178,750; district No. 3 \$342,700; district No. 4, \$71,700. Total value \$1,354,850."

And attached to that list, besides your own, was the name of—

MR. FROST: We now object to that.

THE COURT: The other names do not matter.

Q. (Mr. Peters) Is that list a comprehensive statement of the list of properties that are shown in detail on this photographic list?

A. As I recall it, only I said, as I remember this, about \$300,000 less valuation.

Q. Less than that valuation?

A. I think less than that total, as I recall it. I think so. I have never totaled that up since we got it out. I don't know as I recall it. If you people check it up I will admit that check, but I haven't checked it up since I made it out, and it passed from my memory. Before I answer that I would like to check it up.

Q. I was simply trying to identify the list.

A. Yes sir; generally speaking it is.

Q. November 28, 1914, you wrote to Lewis, Wiley & Morse, Central Building, Seattle, Washington as follows:

"Replying to your favor of recent date, requesting appraisement of the following property:

Lots 3 to 10, Block 2 Tidelands west of Laurel Street.

Lots 1 to 10, block 3 tidelands west of Laurel Street.

Lots 1 to 5, Block 12 tidelands west of Laurel Street.

Lots 16 to 20, block 12, tidelands west of Laurel Street.

Lots 1 to 20, block 13, tidelands west of Laurel Street.

Lots 3 to 10 and lots 11 to 15, block 14, tidelands west of Laurel Street, all in townsite of Port Angeles, comprising in all 61 lots; will say that I have gone over the several pieces of property comprising this list, and will state that a very conservative value on this property at this time would be eighty thousand dollars.

This property is future business property and the value will be increased by the contemplated improvements.

(Signed) Yours very truly,
Vice President & General Manager"

What was that?

A. The Olympic Power Company. I was selling them power at the time and I presume I wrote it on that letterhead.

Q. Is that property referred to in this photographic list?

A. No sir.

Q. This is additional property?

A. This is additional property.

Q. Where is that property situated?

A. That property is that that Jack Woods had an option on; that is east—

Q. You will identify that on the map when it comes?

A. Yes sir.

Q. Whereabouts in the city of Port Angeles was that property situated with respect to the property we were talking about yesterday?

A. That is west of the property.

Q. How far west?

A. Adjoining it on the west.

Q. Is it in the central business portion of the town?

A. No.

Q. It is a little off?

A. Yes sir.

Q. That was made in November, 1914?

A. Yes sir.

Q. Some six months after the other letters?

A. Yes sir.

Q. To refresh your recollection then from that valuation and estimates made at that time, what would you say as to that being a fair, reasonable value as of March, 1914 of these lands mentioned on the yellow sheet?

A. Well I think that would be somewhat near it; but it would be a little high. As I say, in places the valuations that I placed on those was what I had sold a lot or two here and there for.

Q. That was your impression 'at the time of the market value, was it not?

A. But if it came to the matter as you defined it yesterday, it would make it hard to really arrive at a conclusion because you can't sell a great many lots.

Q. But that was your best judgment at that time as you stated to Lewis & Wiley of the market value of that property, was it not?

A. Yes sir; you could sell one or two lots for those figures at that time.

Q. You were trying to advise them as to what was the present fair, market value of that property in November, were you not?

A. Well, it was slightly optimistic, but that was the idea.

Q. And that was what you gave them?

A. Yes sir.

Q. Taking that into consideration, this flurry that you referred to, had not yet ceased, had it?

A. Well, I will say regarding that, that I have always had the idea that when we got a railroad that that would increase the values of property materially, and the last time I thought it would; but since then I find that it has not worked out as I thought it would. For years I have always thought if we got a railroad it would increase the value materially.

Q. And that was the general view of the public at Port Angeles at that time, wasn't it?

A. I do not know as it was. That was my idea.

Q. Mr. Aldwell, referring to block 15 of the townsite of port Angeles, you put on that in this estimate, this photographic copy that we have here an estimate of eighteen thousand dollars.

A. What lot was that?

Q. That was lot 1, block 15 of the townsite of Port Angeles. You put a valuation of eighteen thousand dollars on that; what was the value in your judgment?

MR. EWING: Do you desire the testimony that you gave yesterday with reference to the valuations that Mr. Peters asked you about to stand as your honest judgment now?

MR. PETERS: I do not think the witness can choose what is going to stand and what is not.

THE COURT: You will have a chance to cross examine him later.

MR. EWING: The witness explained that his testimony given yesterday was under a misapprehension as to time, and I thought the time to correct the error that he made yesterday was now, rather than to let it stand and proceed with the examination.

THE COURT: If the witness wants to make any explanation, he may do so.

THE WITNESS: I will say that in the material part of it I will let it stand. I have raised one or two lots and lowered one or two lots, but materially it will stand.

MR. PETERS: That is the way I took it, to be your best judgment.

A. Yes sir; I will say I made out a tabulated list of what I considered the value. If you want to look at it.

MR. EWING: That is what I suggested yesterday.

Q. (Mr. Peters) Where did you make up the list?

A. At the Arctic Club.

Q. Has anybody else seen the list?

A. No sir.

Q. (Mr. Ewing) Does the list include the properties which you testified to yesterday as well?

A. Yes sir.

Q. So that it will be complete?

A. So that it will be complete, so far as I know them.

Q. (Mr. Frost) As of what date did you fix your estimate of the value?

A. The valuation I put on them was, as near as I could arrive at it from the sales and purchases that were made and what would be the fair value, what you could sell a few lots for,—but when you come down to value Port Angeles property it is awfully hard, because when you sell a few lots nobody else will buy another.

MR. PETERS: We object to that cross examination now.

THE COURT: Counsel is trying to fix the date.

THE WITNESS: March of 1914, the date that you asked me.

MR. FROST: If these lists be submitted, with the testimony of this witness, the county assessor, and with the county assessment rolls, as in the court house, and we will permit the county assessor to place the assessed value of that property upon that list. We will get a correct list that will simplify matters.

Mr. Peters: I want to check this to see if it covers this particular district that we have taken as a sample.

MR. PETERS (examining list): May it please

Your Honor I find it is going to take us a long time to check this list that the witness has handed me here and that we cannot do it without an expenditure of time, unnecessary time, and I propose to turn this witness over for cross examination at this time with the right to take up this list further after we have had a chance to check it at the noon hour. Is there any objection on the part of counsel?

MR. FROST: No.

MR. PETERS: Will you take him and fill in. We will take it up after we examine this. I do not know whether Mr. Ware's testimony will cover all this or not.

Before turning the witness over, I wish to offer in evidence in connection with his testimony this plaintiff's Exhibit H which is the report to the Public Service Commission.

THE COURT: It may be admitted.

Plaintiff's Exhibit H received in evidence.

MR. PETERS: I desire to offer this photographic list and these letters on this basis, the two letters G and H, on this ground. Your Honor yesterday ruled that they were not competent at that time; but I call your Honor's attention to the rule of practice in instances of this kind, taking it from Cyc and I do not think there is any question about the rule. The question is as to the discretion and application. They say, "Where it has been charged in our bill that the east end of this county was opposed to the timber interest which kept the east end, that the politics of the county were entirely controlled by this city of Port Angeles, that the citizens of Port Angeles owned and those who controlled the votes owned property in the town of Port Angeles, that they were all legislating and plotting for the benefit of Port Angeles as against the non-resident holders, such as these timber plaintiffs have shown themselves to be in this case, and this comes within the rule of the conspiracy on the part of the people generally in the east end of the county and of the city to accomplish an unfair assessment of their property in their favor

as against those of the western part of the country'' and we will endeavor to couple this up, if your Honor pleases, by showing actual fraud, actual intent, actual practice, a confession of actual practice on the part of the assessing officers who are elected by the votes of citizens largely of this community of which this witness had been a resident and a marked one for twenty years.

MR. RIDDELL: The trouble with counsel's authority is this: Your Honor asked counsel yesterday whether he intended to include this witness as one of the conspirators, and counsel was not willing to make the statement to the court at that time, and counsel's statement at the present time, in making this offer has carefully framed it so as to avoid making the statement to the court that he would later couple this witness up as one of the conspirators. It is a very familiar rule of conspiracy with which counsel and the court are thoroughly familiar, that before testimony, or before acts or declarations of a conspiracy can be introduced in evidence, the conspiracy must first be shown. I think it would be within the discretion of the court, if counsel will say to the court and if counsel will state now, that he will connect this witness up as a portion of the conspiracy—I think the testimony pursuant to the conspiracy would be permitted under the general rule; but as counsel is unwilling to accept that burden, and yet makes this offer to attempt to get the benefit of it, we think that the testimony is just as objectionable now as hearsay evidence as it was at that time.

MR. PETERS: I am not unwilling to accept the burden at all.

THE COURT: I am inclined to think there is grave doubt about its admissibility. A case that is tried to the court, that is very liable to be appealed, it is better to make a mistake in admitting too much, so the appellate court can disregard it if it thinks it is objectionable, than to admit too little and then have the appellate court finally set aside and send it back to be tried all over again. I overrule the objection and admit it. I am inclined to think myself I would disre-

gard it. I think the opinion of the witness made at this time on oath is better than representations made for the sale of bonds and building buildings and the like.

MR. RIDDELL: Let the record show that we object to it on the ground that it is hearsay and on the ground that it is not admissible until the witness has either been connected up with his portion of the conspiracy or offer to so connect him up, is made.

MR. FROST: And there has been no identification of the signatures of the numerous names that are appended to this instrument and no opportunity for the cross examination of them.

THE COURT: He did identify the signatures; that is, he identified them as the signatures of those men purporting to sign.

MR. FROST: The witness was not qualified in any way.

THE COURT: So far, it does not make it the admissions of those other parties, anything that is in there.

MR. PETERS: I do not intend to press that. The court rules that out when I asked him for the signatures. I did not intend to press that.

MR. FROST: We also object on the ground that it is not the original. It is a photographic copy, and if the plaintiffs in this case were capable of getting a photographic copy they are also capable, amply able to produce the original, and it has not been positively identified. The witness says that he thinks probably that is the list; but it has not been properly identified as the list, if such list was submitted.

THE COURT: On that ground the objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

MR. FROST: As to the statement made to the Public Service Commission of the state of Washington we object to that on the ground that it is a statement of value made one year subsequently to any values that are in controversy in this suit, and that it

is in the nature of hearsay and not properly admissible in this case.

THE COURT: The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

THE COURT: Exhibits E, F, G and H are admitted in evidence.

MR. FROST: We make the same objections to be noted, and exception.

MR. PETERS: This is one of the list I called his attention to and gave him the aggregate values, which I called your Honor's attention and offer it in connection with the other.

THE COURT: It may be admitted in evidence.

(Paper referred to admitted in evidence and marked Plaintiff's Exhibit I.)

MR. PETERS: I will abide by the court's ruling with respect to this not being binding on any but Mr. Aldwell.

On cross examination of Mr. Aldwell the witness states that the Olympic Power Plant was built in the fall of 1910; that a dam was built across the Elwah River. That on October 30, 1912, the foundation under this dam for a distance of 90 feet went out and let practically the whole river flow through. Repairs to this were not completed until September or October, 1914. The witness was asked if it was not a fact that on the 1st of March, 1914, they had an immense masonry dam across the Elwah River with the bottom of the river washed out underneath the dam. He answers:

"No, no; on November 4th, 1913—about December the engineers made a blast. The blast was filled enough so that we could get power to the power house and we were generating power in December 1913 and January 1914; but there was so much seepage going through at that time that we were not sure that we had the dam until we made a further hydraulic fill which was not completed until the Fall of 1914.

He further states that on the 1st of March, 1913 and the 1st of March, 1914 they had conditions grow-

ing out of this blow-out that made the value of this water power plant very doubtful as to whether it would hold out or not, until they got it sealed.

"A. Until we got it sealed. They have the same thing on Cedar River now, and they have not got it sealed yet.

Q. On the first of March, 1913 and 1914 it would have been almost impossible for your power site or dam to have had any market value wouldn't it?

A. Of course. That depends on how a person would look at a dam like that. I was always optimistic and thought it could be done. I don't know about other people.

Q. And the market value would be very doubtful?

A. Yes sir.

Q. Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?

A. Well, the general impression was—

MR. PETERS: We object to that.

THE COURT: That would hardly fix the market value I guess of power plants and the objection is overruled, exception allowed.

A. I think around Port Angeles they were not very optimistic.

Q. In other words the general impression was that your dam and power site was a failure up there?

MR. PETERS: I object to that as being incompetent, immaterial and irrelevant.

THE COURT: Objection overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

A. Mr. Earles and several others told me that they did not think it would stick.

Q. They told you you could never make it stick?

A. That is what they told me.

Q. That was the general impression?

A. Yes sir.

Q. Mr. Aldwell, did you succeed in sealing the dam so that it would hold water before the 31st of December, 1914?

A. Did we what?

Q. Did you succeed in sealing the dam and getting it to hold water before the 31st of December, at the time on which you made your report to the Public Service Commission, 1914?

A. Yes sir.

Q. You succeeded after the first of March, 1914 and prior to the time you made this report?

A. I said somewhere around September or October, as I recall it.

Q. You thought the dam would be fixed up satisfactorily at that time?

A. Yes sir.

Q. Did this report which you made to the Public Service Commission on the first of March, 1915, in your judgment, represent the market value of that property on the first of March, 1913 or the first of March, 1914?

A. No sir, it would not; and I always said in that report to the Public Service Commission that there was considerable to be deducted from that on account of the blowout but I stated that to counsel. Their figures were satisfactory."

Witness further states that there was a manufactured boom in Port Angeles which began in the fall of 1912 and extended to possibly January, 1913. This boom was manufactured by certain real estate speculators in Seattle, who created the boom and then proceeded to unload at high price the stuff they had obtained, and in about January, 1913 the boom flattened out and there has been practically no market for real estate in Port Angeles since that time. The witness has not sold enough real estate in Port Angeles since January, 1913 to pay his office expenses. It has always been very difficult to arrive at a basis on which to make a value, on which to base values of Port Angeles real estate. The values that then prevailed were entirely artificial and were not warranted by the actual development and growth as has since developed.

The witness' attention is called to the fact that in

his letter to Mr. Grasty, Plaintiffs' Exhibit F) he states:

"Every available house and also every storeroom as being in use and there are over 150 families living in tents and there is a demand for business locations which will cause the construction of several business blocks as soon as the grading is completed."

Witness says that such a condition does not now obtain.

There are some some people living in tents now. The witness presumes they could get houses but there are people living in tents around the mills. He does not know whether if all lived in houses, there would be enough houses. These people are living near the Earles mill, the new mill, at a remote distance from the business portion of the town. Some people suspected at the time this artificial condition and had an idea that the actual values would be a great deal under those created by the boom. There were a number who would not buy property.

A great deal of the property sold during this time was on a partial payment down and the balance in installments in the future. A great deal of this property reverted on forfeiture. Some people are abandoning the property that they then bought.

Witness bought and sold property during the boom. Lot 7 in Block 34 of the townsite of Port Angeles he sold to Howard Waterman for \$3100. in the fall of 1912. This was during the boom. He gave a mortgage for \$1150 for a year. There was ahead of him a \$1000 mortgage. He could not pay this mortgage; it was let run for three or four months, and the deed was put in escrow for a year. Finally he forfeited the property for the mortgage; that is for \$2150 although we still extended the time for him.

It is stipulated by the parties that this lot is assessed for \$1100.

The property of Mr. Rose, the house on the corner of Francis Street, was sold for \$5000. Witness states that himself and his firm own \$50,000 or \$60,000 worth

of unimproved and improved property, part of it in addition lots adjoining the town.

Q. Do I understand you to say that you were willing to sell this at double the assessed value?

A. Yes sir.

Mr. Peters: That would not be competent.

The Court: Objection overruled.

Mr. Peters: Note an exception.

THE COURT: Exception allowed.

Witness would not have been willing to accept double the assessed value of this property on the 1st of March, 1913. He was then in an optimistic frame of mind.

He does not know whether he would have been willing on March 1, 1914; he would now. His present opinion is that the value of that property, consisting of about \$50,000 worth of unimproved lots does not exceed twice the assessed value and he would today willingly sell it for that price.

The witness being asked to explain the character of the real estate market that has prevailed in Port Angeles, said that every two or three years they had movements; that what little he had made while there he made by buying against the market; he would buy when the other fellow wanted to sell; and would sell when the other fellow wanted to buy; "but in 1914 I got a little optimistic. I thought the railroad would do a great deal for the town and I bought considerable property. The witness could not state what number of transfers would be the normal real estate market in Port Angeles, that after perhaps twenty sales were made of Port Angeles real estate in normal times that exhausted the market.

"A. What I meant when I made this statement was that when you have listed property it is awful hard to convince any person that the value will increase so he will buy it. It is hard to get a customer except when these little movements occur.

Q. In fixing the valuations given in these statements, so far as you personally was concerned, I believe you said yesterday that you took for the values

in the whole district valuations fixed upon the basis of the highest sales that had been made within that district?

A. Well I never checked anything up when I made it. I made it, knowing the bonds would run ten years and I knew that they would be paid and there wasn't any chance of any person losing.

Q. The high valuation and estimate which you made was fixed upon the basis of the highest sales that had been made within any of these districts?

A. As I recollect it. If there was any high it would have been the highest.

Q. Even though there may have been only two or three sales within a particular district you would take the highest value on any of those sales?

A. Yes, sir; but as I say, I never made the statement carefully. I wrote it down and put down what I thought it would be worth in an optimistic vein.

Q. But you would take the highest value represented by any sales and assume in that statement that the same valuation would cover the whole district?

A. Well I don't think there were any higher valuations than I put on it.

Q. Would those valuations be borne out by actual subsequent sales, had they ever been?

A. In one or two instances.

Q. In the district as a whole?

A. No, sir; in one or two instances.

Q. In one or two instances?

A. Yes, sir.

Q. Now in a great majority of cases what has been the truth with reference to valuations which you put on at that time of the prices obtaining at subsequent sales?

A. They have not maintained.

Q. And could you say what your valuation was below your estimate?

A. I never looked it up.

Q. You could not make an estimate?

A. No, sir."

The witness is shown by defendants' counsel a

photograph (Defendants' Exhibit 1) taken of Port Angeles before March, 1914, and identifies the following lots shown on the photograph as being in the statement that he made to Grasty. The witness identifies, by pencil figures with a circle around it, the different blocks, points the lots out on the map to the Court, showing those designated on the photograph, the appearance and surroundings as shown thereon, of the lots testified to in the case by different witnesses.

Lot 1, Block 14, right opposite the Coupler Building. This the witness had valued at \$6000.

Referring to the lots west of the above lot on the photograph the witness says:

"This would be the valuation March 1, 1914: Lot 2 \$3000.; Lot 3, \$2500; Lot 4 \$2000.; Lot 5 \$2000. There are no improvements on these lots, except street graded in front of the lots.

Lot 1 Tidelands west of Laurel Street, the witness valued on his statement at \$12,000 and \$8500. on the intermediate lots. These lots are 50 by 300 feet. That is the City Hall on lot 10 Block 32. "I put it at \$4000."

There is a large hill back of these lots. There is no street in existence. It is just a zigzag to the City Hall. The witness thinks that would be pretty level back for three lots, and then the block runs up to a height of about 100 feet. These photographs are marked Defendants Exhibits 1 to 13 for identification.

On Exhibit 2 there is a theatre building on the corner, which was built there before March 1, 1914. This is on the right hand side of Exhibit 2 and is the principal corner in the town.

The witness marks the exhibit with a letter A. This lot the witness valued in his statement at \$10,000.

Defendants introduce as Exhibit 14 a map of the business section of Port Angeles upon which is marked the assessed valuation of the property for the years 1912 and 1914. The 1912 assessment is the top figure, the lower one the 1914. On improved property the assessment on the land is put first and the improvement next for the year 1912, then a pencil line is drawn

and beneath that is the assessed valuation of the land for 1914, and the lowest figure is the assessed valuation of the improvement for 1914.

The witness Aldwell marks with yellow pencil on this Exhibit 14 the boundaries of the business section of Port Angeles and writes upon the map "Business section". The witness' attention being directed to the photograph, Plaintiffs' Exhibit 1 and to the map Exhibit E, he marks with blue pencil upon this map, Exhibit 14, the location of the property shown in the photograph Exhibit 1.

The witness takes the plaintiffs' Exhibit J—the witness' statement of values, and marks in red pencil upon the map, Exhibit 14, the location of the lots referred to in Exhibit J, and the defendant explains that north of the yellow line, at the point in Block 2 of Tidelands east of Laurel Street, there is no business property of any kind.

“Q. Pointing to the land on what you have marked as the business district in Port Angeles, on lot 4 of block 2, Tidelands east of Laurel Street, you say that east was this way, up to the middle of this blue line at the end of $7\frac{1}{2}$ Tidelands east; there is no business property of any kind up there, it is not used for business purposes is it?

A. None whatever.

Q. Is there anything in the configuration of the ground there which causes that?

A. It is over a bluff on the water front.

Q. Now this bluff rises at angle of about what?

A. Quite precipitately.

The witness says that this bluff rises some 80 or 100 feet high. There is no prospect in the immediate future of Lot 1, Block $7\frac{1}{2}$ being used for business or any other kind of property. They did talk of putting a transfer depot in that neighborhood; but if the depot is put there people will have to walk six blocks before they can leave the water front to get up into the town. The property enclosed in the red line on the map Exhibit 14, is contiguous to the business portion of the town. The witness put a valuation of \$80,000 on that

property enclosed in red. That valuation was placed in his statement, Exhibit J. This valuation he made in November, 1914. The witness was more optimistic in March, 1914 than he was in November of the same year; about 10 per cent more. His ideas of what the railroad would do for the town were greatly waning; perhaps 20 per cent would be the proper measure; so that the valuation would have been in March, 1914, \$96,000. That is, if the letter had been written in March instead of November, 1914, the witness' valuation would probably have been \$96,000 instead of \$80,000.

"Q. Now this map shows that that property there was assessed on March 1st, 1914 at fifty-nine thousand six hundred dollars; do you know whether or not that was—what is your opinion as to whether that was a fair assessment?

A. As I recall it at the time, that sixty-two thousand one hundred dollars was the memorandum I had attached to that rough lead pencil note that I had attached to that paper.

Q. You made a rough lead pencil memorandum?

A. At the time I made it up, I went up to the Assessor's office at the time and made it up.

Q. I may have made a mistake on figuring that up. The map will show for itself; You say that you think at that time the valuation was sixty-two thousand one hundred dollars?

A. As I recall it.

Q. The total assessed value?

A. As I recall it. It is easy to figure it on the actual value; that would be one hundred and twenty-four thousand.

MR. RIDDELL: That is double the assessed valuation; it is one hundred and twenty-four thousand, and his testimony is ninety-six thousand.

MR. PETERS: Mr. Frost, that I may keep this straight, I understand that the properties were assessed at fifty per cent of their value.

MR. RIDDELL: From fifty to one hundred per cent, and sometimes over.

MR. FROST: We are not contending that they were assessed at any particular amount. Our contention is that the property was assessed fairly, uniformly and accurately.

MR. PETERS: I will ask them, if your Honor please—well never mind.—Well, I will do it to please counsel. We think they should elect to declare to the Court and counsel whether they claim that the properties in question here in Clallam County were assessed at fifty per cent of their value or at their full value. One of the issues made in the case here is that in 1913 the law was changed and the tax for 1913 ought to have been equalized, that is the assessed valuation ought to have been at a fifty per cent valuation, and the same in 1914. They deny, as a matter of law, that that is proper, claiming in one instance that the Act is not yet matured and does not apply, and in the other instance that it is unconstitutional. It becomes important of course, to find out what they actually do contend as to how they assessed this. The pleadings are not clear.

THE COURT: The Court will not compel them to elect; but the Court will assume unless they disclaim that being officers and under the law are not authorized to act, and the constitutionality of the law, that they assessed it at fifty per cent.

MR. PETERS: I understand the Court takes that theory and I except to that theory.

MR. FROST: If your Honor pleases this is our theory of the law in the case. The constitution of the State of Washington provides that the Legislature shall by general law provide for the assessment and taxation of all property within the state of Washington according to its value in money, so that each person or corporation shall be taxed in proportion to the value of his, her or its property. The courts of the state have repeatedly held that there is no mandatory provision of the statute which would require property to be assessed at its full value in money or any proportion of its full value in money. That the full requirement of the law and the full requirement of the

constitution of the state of Washington and the full requirement of the Federal constitution is completely answered when the assessor has assessed the property within his county equally and ratably and uniformly.

THE COURT: I know you are presuming if there is a statute there that these officers followed the law.

MR. FROST: The statute provides, and we deny the constitutionality of the statute. The statute simply provides that property shall not be assessed to fifty per cent of its value.

THE COURT: Do you deny that it is constitutional?

MR. FROST: We deny the constitutionality of the statute. We have set that up in our answer.

THE COURT: Then you disclaim that it was assessed at fifty per cent?

MR. FROST: We are disclaiming that it was assessed at fifty per cent.

THE COURT: You are disclaiming that there was any effort to keep it down or to keep it at fifty per cent?

MR. FROST: We disclaim that there was any effort to keep it down or keep it at fifty per cent. We desire to show to the Court that this assessor assessed property in that county between different classes of property and different owners and that he assessed that property equitably and fairly and uniformly, so far as it lays within human possibility to do so. We do not claim that assessors are infallible, and the courts do not require that, but that he made a fair, equitable or uniform assessment, whether it be thirty, forty or fifty per cent, we are not here to state. That is something for the Court to determine. We say that the assessor went out there and taxed everybody uniformly and we also allege affirmatively in our answer that it does not matter at what proportion of its actual value property is taxed, because we set up in our answer that all the taxes levied within the state of Washington either for said county, municipality or other purposes, are by law required to be levied upon

estimates in dollars and cents that are made public, giving the public an opportunity to hear those estimates, and that taxes are levied in dollars and cents in fixed sums and the rate necessary to raise that tax is figured by calculating officers, and so far as the constitution is concerned, it matters not whether the assessment is high or low, the only thing we have to contend with is whether or not these plaintiffs have been assessed unjustly as compared with other property or with the general mass of property in Clallam County.

MR. PETERS: The ultimate effect of this will be taken up by your Honor in determining the law of the case; but this is the first time that the matter has arisen in the production of the evidence and it was extremely interesting to us to know what the assessor thought they were doing when he assessed it, whether he was assessing it at fifty per cent of the valuation or one hundred per cent of the valuation. We asked them to outline their theory and I understand they refused to do it.

MR. EWING: We did not refuse to outline our theory; We are not required to do that. This is plaintiff's case. We are at the stage of cross examination of their witnesses. We do not have to try our case now.

MR. EARLE: You didn't make any opening statement when you started your case.

MR. RIDDELL: We don't have to do it.

MR. EARLE: I asked you to do it.

THE COURT: There is nothing before the Court. I refuse to make a ruling.

The witness, referring to Defendants' Exhibit 2, says that this is a view of Port Angeles looking east on Front Street from the corner of Laurel Street and this corner is probably the best corner in the town. Block 7½ Tidelands east, is at the easterly corner of the property around which the plaintiffs have drawn a blue line.

The witness marks on the map, Defendants' Exhibit 14, with a yellow cross surrounded with a red

circle, the points on the map at which the top of the hill is shown in defendants' Exhibit 2. It is between Peabody and Chase Streets which is marked on this map by a red cross. That indicates the top of the hill as shown in this photograph from the business portion of the town. There is the point, Block 7½ which is valued in that statement at \$1250, and is assessed at \$9500.

The witness is referred to Defendants' Exhibit 3, which is looking down the hill just back of First Street, looking down Laurel Street; at the lower right hand corner of Defendants' Ex. 3 is the Aldwell Block. This is a picture of a large part of the business portion of Port Angeles as it existed at the time of the assessment of 1912. The Morse Building has been built later.

Defendants' Exhibit 4 is another picture looking east on Front Street, just east of Laurel Street. Just east of Oak St. is a brick store. This photograph shows practically all the business property on Front Street, except the Cohsburg brick block, which is across the street on the north side and also another building which is on the corner on the north side, a two story frame building.

Defendants' Exhibit 6 shows Front Street looking east adjoining the corner of Laurel Street, in the immediate foreground, as it existed at the time of the assessment in 1912.

Defendants' Exhibits 7 and 8 show the Post Office building on Oak Street, just back of the brick building; also shows lot 11 in Block 15.

Defendants' Exhibit 9 is the corner of Lincoln and Front Streets, being lot 1, block 1 Tidelands east of Laurel Street.

The witness marks Defendants' Exhibit 8 as showing the corner of Front and Lincoln St. looking west on Front, commencing on Lot 1, Block 1 Tidelands east.

Defendants' Exhibit 10 shows the corner of First and Oak Street being lot 11, block 15 of the townsite, looking north on Oak Street. This is taken on First

St. immediately east of Laurel St. looking west, showing lots 20 to 11, block 15, Townsite and other lots on the street.

On the left hand side of Defendants' Exhibit 2 the ground is precipitous. This building, a photograph gallery, is mostly on the street, the building showing on the left hand. And from there the ground rises up to 80 or 100 feet.

Defendants' Exhibit 7 also shows this rise of ground. They have recently trimmed off the top of this bluff on the street above five to ten feet; but the lots were left just the same. That shows the height above the business district. During the Lewis, Wiley & Morse sluicing to make the Front St. fill some of the dirt there was taken off. Lot 10 on top of the hill can be seen from the photograph.

Witness placed a valuation of \$1500. on that lot and the lot adjoining it on the top of the hill at \$900. and \$800 on the next. The witness is directed to mark the descriptions on the photographs.

Witness says that the list of valuations which he made out covers practically all of the business section and the valuations are as of March, 1914.

It is agreed by counsel, in order to expedite the trial, that these expert witnesses on real property might furnish tabulated lists of the property, giving the description of the lot, their own valuation and the assessed valuation, the latter to be sworn to by the Assessor, if demanded, and that this should stand where so introduced as the evidence of the witness subject to cross examination.

With respect to the present list which was offered by the defendants as part of the testimony of the witness Aldwell, the witness was permitted to explain as follows:

"I will say in explanation that I changed 2 or 3 lots in looking it over. As Mr. Peters knows, when talking last night I had in mind and I referred to the time of the boom, and Mr. Peters I think, was mistaken, as well as I was, and he agreed with me,—if the stenographer will turn back to his notes,—I said

that was just before the end of the movement. Now I raised two lots a thousand dollars apiece. Lot 20 in Block 14 at the height of the boom I sold for ten thousand dollars, including the building on it. So in looking at it more carefully than just hurriedly while I was talking here, I took the price of the building off and probably five hundred dollars depreciation between 1913 and 1914 and put that lot at sixty-five hundred dollars. Then I equalized two lots in 15 and raised them from three thousand to four thousand."

Witness further states that he got the years 1913 and 1914 confused for a minute. He had sold Lot 20 for \$10,000. at the height of the boom with a two story building on it, and in testifying he thought of the value of the lot with the building included; but in thinking it over he recalled that that lot never had a building on it; so he deducted the building and some depreciation between 1913 and 1914; but the sale for ten thousand dollars was at the height of the boom. That is lot 20, block 14. He gave the value the night before, upon the witness stand, at Nine thousand, but after getting off the witness stand he changed it to sixty five hundred. He did not communicate with the plaintiffs representatives or counsel after leaving the court room; had no communication with anybody. He telephoned to Port Angeles and got certain prices to arrive at a conclusion. He had forgotten what prices he got on certain lots. The lot that had a building on, that witness had appraised at \$50,000 is lot 10, block 16.

The witness is shown by the defendants, a photograph Defendants' Exhibit 16, which he admits is a panoramic view of the entire residence section of the town. This was taken in the latter part of 1913 or the fore part of 1914. It shows the high school and court house. It is admitted as Defendants' Exhibit 6.

The witness cannot state definitely the time when the photograph Exhibit 8 was taken. It was probably taken 2 or 3 years ago, before the Postoffice building was built, which was started in 1914.

The witness is asked by counsel for plaintiffs if

he would make up a list of the \$50,000 worth of property which he stated he and his partner would take double the assessed valuation for, and says that he will. He is then asked by the defendants:

“Q. What you were stating then is, you would be glad, willing to take double the figures upon the assessor’s books for 1914 for that list of property which you will furnish us?

A. Yes sir.

Q. You would not in February of 1914, would you Mr. Aldwell?

A. Well I would hardly put myself in the frame of mind I was then. I would not absolutely swear to that.

The witness says that what he means is, that he would take that sum now, but whether or not he would have done it at the time inquired about he would not swear.

G. M. LAURIDSON, a witness on behalf of the plaintiffs being sworn, testified substantially as follows:

He has been a resident of Port Angeles for 23 years continuously. He has an interest in a timber claim down in the Solduc Valley.

Q. “And you had a conversation with Mr. Hansen, one of the County Commissioners with reference to taxing that land, did you not?

A. I had two years ago, or a year ago.

Q. With reference to the valuation that was placed by the assessor and by the Board of Equalization upon that land, did you not?

A. I had a talk with the Board at that time, at the time the Board of Equalization was in session in 1914.

Q. You had a talk with Mr. Hansen as a member of that Board did you not?

A. Well, the whole Board.

Q. And you told them that you thought you were assessed too high for that?

A. I believe I did, yes.

Q. What did Mr. Hansen say to that?

A. I do not recollect what he said now.

Q. You do not recollect that?

A. No.

Q. Now, Mr. Lauridson, just you refresh your recollection the best you can, will you? Is there any way you think you can remember it?

A. Probably Mr. Hanson spoke for the Board, being Chairman of the Board and he said I was assessed like everybody else in there; that they could not make fish of one and flesh of another.

Q. Didn't Mr. Hansen tell you that he could not lower the valuation of your timber because it would make a precedent, and that they would put it in to the timber people?

A. No, he said "If we reduce your assessment it would look as if we were trying to favor you."

Q. As against what?

A. Against the other timber men up there.

Q. Didn't he further tell you that he could not lower that, because they were disposed to stick it into the timber men?

A. No, sir, he did not say "stick it in".

MR. EWING: We object to counsel's manner of interrogating his own witness. These are all leading questions.

The Court: The objection is overruled.

MR. EWING: Note an exception.

The Court: Exception allowed. He seems to consider the witness is reluctant.

MR. PETERS: Oh, yes, Your Honor.

Q. Didn't he tell you substantially that?

A. Please repeat that question.

Q. Didn't you tell Mike Earles that coming down on the boat the other day?

A. I had a talk with Mr. Earles. We talked over things in general, and I think I told him what Mr. Hansen said, that they could not reduce mine because it would not look well to do it. Mine is an isolated claim up there. I am hemmed in by the Lacey people, and I can't get anything for it very much, and

I used that as an argument to the Board.

THE COURT: You deny that you told Mike Earles that?

A. No sir, I do not deny that we had a talk, a general conversation about it. Mr. Earles told me at that same conversation that he would not take the whole of Port Angeles townsite for the assessed valuation today; and we had a talk back and forth of that kind. That is the conversation we had. If he wants to use the words I used to him, I think I am at liberty to use what he told me. He told me that he would not take the whole of Port Angeles at its present assessed valuation today.

The witness states that he has been Vice President of the Citizens National Bank of Port Angeles for four or five years and Mr. Hansen is one of the directors, and has been so for eight or ten years. Hansen has been a County Commissioner for three or four years.

The timber claim that he referred to was assessed for 1914 at \$5270. Witness being shown a paper writing signed by him admits that on July 23, 1914 he gave an option on one-half interest in the property at \$1500. and that was the price he was willing to sell it for.

CROSS EXAMINATION

The witness says that this timber claim was isolated and was hemmed in by the Lacey holdings.

“Q. And by being hemmed in by the Lacey holdings, then, it means not being large enough to constitute an operating proposition of its own, and that ultimately it will be taken by the Lacey's or their successors in interest at whatever they may choose to pay for it, is that true or not?”

MR. PETERS: I object to that as being immaterial and incompetent.

THE COURT: Objection overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed. I do not understand that that should affect the question of values for the purpose of assessments any more than

if one man had ten dollars and the other man had a thousand, if you would assess the one man that had a thousand dollars more than you would the man that had the ten, because you had a greater opportunity to assess it; any more than you would assess the man who had a bigger warehouse full of grain than you would assess the smaller one, because it would cost less to house it per bushel. As I look at it, the mere fact that a man owns a small claim, and another one owns a large one, does not affect the question of value at all. The one that has the small claim, if he is neighborly he might get all the advantages of working along with the man who had the other claims. It is an element of hostility, or friendliness that the assessor has nothing to do with. I overrule the objection.

MR. FROST: If your Honor pleases, we alleged in our first affirmative defense that the value of timber is dependent upon many factors, and that among other things is the size of the holding, that a holding that is sufficiently large to constitute a desirable manufacturing or operating proposition is much more valuable per acre, or per thousand feet of timber than are the isolated claims that in themselves cannot be handled, and we expect to be able to put expert witnesses upon the stand who will testify to that condition, when we enter into our affirmative defense.

THE COURT: I cannot conceive under what circumstances I would give heed to any such argument as that in a case of this kind. But I have overruled your objection and it is urged in good faith and some other Court may take a different view of the matter."

On re-direct examination the witness going to the map points out the location of his timber claim along the Solduc River, and says that it is not hemmed in by the Lacey holdings and is not in any one of the zones in which the Lacey people have more than eighty acres of timber, but is hemmed in by the Forest Reserve.

E. W. POLLOCK, a witness for the plaintiffs, being sworn, testified substantially as follows:

That he is an appraiser, connected with the General Appraisal Company of Seattle in the business of appraising chiefly, manufacturing plants; has been in the business some fourteen or fifteen years. They have appraised about 750 plants in the state of Washington, Oregon and other states and in British Columbia and Alaska. These plants were breweries, distilleries and rope factories, saw mills, shingle mills and all sorts of manufacturing plants.

Recently at the request of the plaintiffs the witness visited Port Angeles and went over a dozen shingle mills, and made a valuation and report to the plaintiffs. He visited the assessor's office and verified the property appraised with the property assessed, going over the detailed assessment lists.

Turning to the appraisal list he proceeds to state the appraisal of the Mason & Babcock plant, whereupon the defendants objected, on the ground that it was irrelevant, incompetent and immaterial and that it does not furnish a proper criterion of comparison between the assessments of the plaintiffs in this case.

The objection was overruled and an exception reserved and allowed.

The witness thereupon states that in his report he made comparison in each of the cases with the assessor's figures in order to be sure that he had the same amount of property in his appraisal that was mentioned in the assessor's books. With reference to the Mason & Babcock plant the assessor's description on his detailed sheets for 1914 shows: "One double block plant value of \$700." Witness found there upon the plant a Challoner double block, a knee-bolter, a cut-off saw, three conveyors, a rip saw, a Nagle boiler, Challoner and Taylor engine, power grindstone, swing saw, center crank Porter engine, portable saw mill with three block carriage, 48 inch size, sixty inch circular saw, 15 dead rolls, tools, transmission, pipe and fittings. He estimates the reproductive value of the above items at \$5760. depreciated value 30 per cent off. Assessor's ratio to depreciated value 17.3 per cent.

Witness referring to the Howell-Hill-Ray Shingle

Mill is asked by the defendants whether he knows if the machinery was in that mill prior to the assessment of March, 1914. He says he does because the people at the plant told him that the mill had been shut down for two years. The wife of the man who runs the mill told him this. The objection of the defendants was overruled, and an exception reserved; the same rule upon objection presented by the defendants that the appraisal was some 18 months after the assessment.

Referring to the Howell-Hill-Ray shingle mill, the witness says that the assessor's figures show nine items, as "furniture, two upright machines, two ponies, four horses, two wagons, one 5 x 7 donkey engine, dry kiln, harness, buggies, total \$1590. Now I did not pay any attention to anything except the plant itself, corresponding to the assessor's figures of \$900 I found a 200 foot Burner Conveyor, one boiler, a one hundred and fifty foot conveyor, pond to mill, dynamo, vertical engine, two Sumner upright shingle machines, conveyor, two packing frames, pipe and fittings, cut-off saw, tools, boiler with Dutch oven, transmission, Chandler and Taylor engine. Total value of personal property reproductive cost \$6125.00. I placed a 20% depreciation on that plant, making a depreciated value of \$4900.00, and the ratio between the assessor's figures and my figures is 18%.

MR. EWING: Do you know the condition of the machinery you found there obtaining on the first of March, 1914?

A. That plant was in operation, and it looked in very good condition. I do not know what the condition was in the first of March, 1914; I did not see it at that time.

MR. EWING: Read the question.

Q. (Question read) With reference to the presence of those items of machinery?

A. No, sir, I would not know about that.

Q. (MR. Earle) The McKee Box Factory, located about two miles from Port Angeles?

A. The assessor's value for personal property as shown by the detailed sheet for 1914 was \$100.00.

I found the following machinery: Sliding carriage cut-off saw, long carriage slide cut-off saw, rip saw table, wood frame box board printer, 6 x 8 engine, wood lathe, shafting and transmission, tools, piping and fittings, total reproductive value, \$875., depreciated value at 25% off, \$656.25; assessor's ratio to depreciated value 15%.

MR. EWING: You do not know what the conditions were on the first of March, 1914?

A. No that plant had been shut down a year or two."

This factory had been rigged up to make boxes for the canneries and the witness understood it had not been run since the cannery had been shut down. The cannery was running when the witness appraised the property on a former occasion three years ago, so he would think it was less than three years that it had been shut down.

Witness does not know of his own knowledge anything of the condition of this mill prior to the time he appraised it.

"The Superior Shingle Company out in Eatonville, or the Eaton Valley district, I could not find on the assessor's books, nor the treasurer's any mill called the Superior Shingle Company, so I was not able to make comparison between that mill, and I presume I had better leave that out, since there is no comparison.

The Eacret mill, about five miles west of Port Angeles, more or less; the Assessor's figures show 1 upright, 1 shingle mill and saw mill attachment, furniture and tools. It is written very fine on the assessor's books, total \$550. I took the mill proper, not the furniture and tools and I found as follows: Boiler with Dutch oven, 1 11 x 14 inch Brownell engine, top and bottom circular saw and carriage, cut-off saw, knee bolter, Mitchell clipper, knot saw, emery grinder, Smith molder, pipe and fittings, tools, transmission. Reproductive cost of personal property \$4645.00; depreciated value at 25% off, \$3483.75; Assessor's ratio to depreciated value 15%.

MR. EWING: What were the assessor's figures on that?

A. \$500.00 for the plant, the furniture was in at \$25. and the tools at \$25.00. I did not take those—the tools, I did, too, yes.

Q. You had no knowledge of the conditions that obtained March 1, 1914?

A. I talked to Mr. Eacrett a few minutes about the plant; so I can say as to that that I had.

Q. From what he told you?

A. Yes sir. The E. R. Waite Shingle Mill, east of Port Angeles, the assessor's figures showed: 1 pony \$20.00, 1 buggy, 1 automobile, 1 watch, 1 piano, 1 phonograph, 1 sewing machine, furniture \$25.00, 1 donkey engine, \$250.00, plant \$400. harness \$5.00. That was for 1914. I found the donkey engine and the plant amounting on the assessor's figures to \$650. My list of machinery is as follows: Donkey engine and wire rope drag saw, knee bolter, shingle machine, knot saw, gummer, center crank engine, boiler, pipe and fittings, tools, transmission.

The reproductive value of personal property \$4,350. Depreciated value at 30% off, \$3045.00; Assessors ratio to depreciated value 21%.

The Hansen and Gelnert Mill, eight miles west of Port Angeles, the assessors' figures show: Horses \$420.00, 1 9 x 10 inch Vulcan engine, double block and upright, \$500.00, wagons \$30.00, furniture \$50.00, harness \$30.00, tools \$30.00. My appraisal compared with the \$500. and \$30. item, making \$530. for the assessor's figures. I find the following machinery: Boiler and engine and approximately one mile of water pipe, 12 x 16 inch Atlas engine, small pump, 2 boilers, log haul chain, drag saw, canter, hoist, knee bolter, Sumner upright, double block, gummer pipe and fittings, tools transmission. Reproductive value of personal property \$7515.00; Depreciated value at 25% off, \$5636.25 Assessor's ratio to depreciated value 9.2%.

I want to say about that, that after I had this made, they told me in the Treasurer's office that some machinery had been moved from some other plant to

this plant, since the 1914 assessment, so that that explanation should go with that. I did not learn that until I had this made out. So that extremely low valuation of 9% ratio would not be correct, I should think.

CROSS EXAMINATION

The witness states on defendants' inquiry that he does not know what condition prevailed in March, 1914.

RE DIRECT EXAMINATION

"The Brown and Drury Shingle Mill near Sequim. The assessor's figures for 1914 show a shingle mill at \$700.00; that was under the machinery item of the detailed sheet; an auto truck at \$500. I did not see the truck. My figures compared with the \$700. item, covering the mill machinery alone; I found a boiler with a Dutch oven, Sumner upright shingle machine, shafting, cut-off saw, 175 foot conveyor, column gummer, tools 12x14 inch self contained engine, 4 x 4 vertical engine, dynamo iron repress. Reproductive value of personal property \$3260. Depreciated value of 33 1/3% off, \$2173.32. Assessor's ratio to depreciated value 36%."

Witness does not know what conditions prevailed in regard to this mill in March, 1914.

"The Skavdal Shingle and Saw Mill sixteen miles west of Port Angeles, the assessor's figures show six items; but the ones that cover the property that I saw are the donkey engine, assessed at \$400. and the upright and saw mill mentioned on the assessor's detailed sheet, meaning the plant, at \$700.00, that makes \$1100. to compare with my figure. It is given at \$1500. on the tabulation. I did not rate the four horses at \$300.00 nor the wagon at \$30.00 nor the harness and furniture and that makes a difference Mr. Ewing. It is four horses at \$300., wagon at \$30.00, furniture at \$35.00, harness at \$35.00, which I did not see and which should not be compared with the plant as I saw it. The only items comparing with the plant are the donkey engine at \$400.00——

Q. Items making up the eleven hundred?

A. That makes up the \$1100.00 are the boiler

with Dutch oven, Sumner upright shingle machine, drag saw, conveyors cut-off saw, sled for bolts, dynamo and electric system, 24 foot pony planer, 12 x 20 inch center crank engine, 15 rolls, saw mill and carriage, 9 x 10 inch Vulcan donkey engine on sled, blower, shafting and transmission, tools, pipe and fittings. Reproductive cost of personal property \$6520.00. Depreciated value at 30% off, \$4564.00. Assessor's ratio to depreciated value 25%.

That mill has burned within the last week or two, since I was there.

The Sturtevant & Pellerin plant, eight miles from Port Angeles, assessor's figures show: donkey engine \$300.00, an upright shingle mill plant at \$800.00, total \$1100.00, The other items, mill owned horses, and so forth, I haven't taken into consideration.

I found there a Sumner upright shingle machine, knee bolter, drag saw, transmission, tools, conveyors, log haul, column gummer, 10 x 12 inch Brownell engine, boiler with Dutch oven, small pump, power grindstone, rip saw, donkey engine.

MR. EWING: Did you find any additional items?

A. Their plant, the assessor's description of the plant is contained in one list, upright shingle mill plant,

Q. Do your items correspond with his?

MR. FROST: The assessor described it as a plant.

A. Wherever he has an item of horses I did not appraise and include in the main plant. I made it separate. I made a separate claim showing those horses omitted, but the total is \$1100. to compare with my total. The reproductive cost of personal property is \$6010.00. Depreciated value at 20% off, \$4808. Assessor's ratio to depreciated value 23%.

The Port Crescent Shingle Mill, known as the Joyce mill, Assessor's figures for 1914—

Q. Is it the Port Crescent Shingle Mill?

A. Yes sir.

Q. (Mr. Ewing): I dont find that.

A. Do you find Joyce there?

MR. EWING: All right.

A. The items corresponding to what I found was shown on the assessor's sheet was 4 upright shingle mill, meaning 4 upright shingle machines, assessed at \$2500. The other items, Mr. Ewing, going to make that up are horses, harness, and furniture, which are not embraced in my appraisal. I found 4 upright shingle machines, a Covell automatic gummer, side grinder, gummer, cut-off saw, Bolt conveyor, boiler with Dutch oven, 13 x 16 Chandler & Taylor engine, tools, shafting, pipe and fittings. Reproductive cost of personal property \$6840. Depreciated value at 20% off, \$5472.-00. Assessor's ratio to depreciated value, 45%.

CROSS EXAMINATION

BY MR. EWING:

Q. You don't know about the conditions there on the first of March, 1914?

A. Yes sir, I talked with Mr. Joyce for a half hour, more or less, and I am thoroughly satisfied that the mill was there in 1914.

Q. With the same equipment in it.

A. Yes sir, with the same equipment in it.

WITNESS (Continuing) Fillion Saw and Shingle Mill, plant located about two miles from Port Angeles; assessor's figures show a total of 12 or 13 items and the total of \$8265. Leaving out the items that I did not appraise, my figures correspond to the following items in the assessor's book.

Q. What is the assessor's total on your item?

A. \$5425.00. That covers the plant at \$3500., a 22 ton locomotive, \$1500.00, mechanic's tools, \$350.00, office furniture and fixtures \$75.00.

Q. (Mr. Ewing) Did you make this tabulation they have here?

A. No sir; that was made in Mr. Steinert's office, but I had it verified by Mr. Prickett.

Q. There are three items quoted on this?

A. I do not know where they got that, where those items came from.

Q. What is your total? It gives \$8205. here?

A. \$8265.00 is mine.

MR. EWING: The list I have comes to \$5425.00.

WITNESS: I find in the saw mill, circular head saw carriage nigger, canter, log haul and truck, 11 live rolls, 100 dead rolls, 4 swings, 1 jump saw, 36 inch DeLoach edger, column gummer, Goodell planer, swing saw, 12 x 16 inch Chandler & Taylor engine, Houston moulder, shafting and transmission, pipe and fittings, tools, electric apparatus, office furniture and fixtures in the office.

In the shingle mill is the following machinery: Tatum & Bowen boiler, 13 x 16 inch self-contained engine, 6 x 6 inch vertical engine, dynamo, tools, pipe and fittings, American double block shingle machine, knee bolter, cut-off saw, power drag saw, gummer, Perkins O. K. saw gummer, 30 inch blower and galvanized iron dust system and dust collector, log way chain and jack, 250 feet conveyor, 3 packing frames, transmission.

In the boiler house I found an Erie boiler, 10 x 20 Erie twin engine, tools and pipe and fittings.

In the blacksmith shop, tools, in the round house Climax locomotive.

In the yard outside a steam winch and wire rope for the dry kiln trucks, 2 pumps in the pump house, 2 wood car trucks.

Reproductive cost of personal property, \$23,715.00. Depreciated value at 25% off, \$17,786.25. Assessor's ratio to depreciated value 30%.

MR. EWING: The Riverside Lumber Company?

A. I did not find that. The Superior I found listed, but I could not find it on the assessor's book under that name. It is possibly listed under some other name. I could not find it showed a thing at two or three years ago.

Q. Did you ascertain whether or not the conditions which you found there existed on the 1st of March, 1914 or otherwise?

A. At the Fillion mill, I found that it had been shut down for some time, and he told me, the man in charge, I forget how long; but I had quite a lengthy conversation with him as to prices, and from him I

gathered that the prices of building material and machinery were fully as high, and probably a little higher in 1914 than they are at the present time."

The witness says that his company appraised all the manufacturing plants in Chehalis county in the year 1914 and again in 1915 for the Assessor and for the County Board. The appraisal was made in the hope of reconciling or settling a law suit which had arisen between nine of the largest plants in the county and the assessor, with reference to the claim of over-assessment. They had previous to this dispute appraised 22 of the 46 plants, and for the county they appraised all of them to have them all on the same basis.

Witness is handed the Washington Decisions of August 11th in which the Supreme Court hands down a decision in the cases referred to and identifies it as the case to which he refers.

Plaintiffs thereupon introduce in evidence a tabulated statement of the witness' appraisal which was admitted as Plaintiffs' Exhibit K, over the objection of the defendants as being incompetent, immaterial and irrelevant and that it does not afford a proper basis of comparison to make against the assessment complained of in this action.

CROSS EXAMINATION

The term, "depreciated value" used by the witness, is the value to the owner and taking into account the wear and tear and obsolescence, which may have occurred, if any, on machines. It means the value to the owner after allowing for what life has been taken out of a machine by use or age. In defining this replacement value they took the property in detail at the present price of material, labor and freight or other elements of value, and from that price of new production they deduct what in their opinion, is the proper amount for depreciation. They take the present cost price of new materials.

Witness gives the following illustration: If a man buys an engine for \$2500 second hand, that cost originally \$4500. they would put the price down at

\$4500. and then depreciate it as they saw fit, according to the wear and tear that the engine showed, or that they could find it had been subjected to, but they would start out on the basis of its being originally a new piece of machinery.

Witness says he knows what market value means. He does not think the market value and depreciated value are the same. The market value assumes that a sale must take place to find out what a thing sells for, while the depreciated value does not make this assumption. In figuring the depreciated value, the property is left in the hands of the owner on the assumption that the property has a particular value to him which generally is greater than that of the market value, and that if the owner would want to turn the property into money he would have to sacrifice something from the depreciated value, ordinarily. Witness could not state the percentage at which he would put the market value below the depreciated value, in the case of these shingle mills. In order to do that he would have to be thoroughly familiar with the local conditions as to the shingle market in Clallam County.

Witness admits that he is not familiar with local conditions surrounding these mills. "The market value," says the witness, comes pretty near being a forced sale value, because of conditions, especially in the shingle and lumber business." The supply and demand of shingles, the ability of the owner to make money out of the operation of the mill, his inability to get insurance and make the investment safe—these elements all tend he says, to make the market value. He would not consider the inaccessibility of the market serious in this case, because shingle bolts would be handy to market.

Witness admits that the market value of all these mills is less than the depreciated value, which is put on them. He could not give with this comparison, any percentages.

Witness admits that a great many features enter into the market value of property, such as these shingle mills, that he did not consider in arriving at this de-

preciated value. He thinks the market value in 1914 would be lower than the depreciated value. The boom would only affect the market value, not the depreciated value.

“Q. Would you be willing to make any approximation of the percentage of what you think the market value is below the depreciated value? Would you say it is as much as 25%? I am not going to pin you down. I won't embarrass you by cross-examination but I want your honest opinion.

MR. PETERS: As to what time?

MR. EWING: As to the present time first, and March 1, 1914, after that.

Q. (Mr. Peters) Do you know anything about the market value at the time, or at March 1, 1914?

A. No sir, I never heard of a sale of a shingle mill property made in Clallam County. My opinion, if I gave it at all on that, Mr. Ewing, would be based on conditions in other places, rather than in Clallam County, and on my general knowledge of conditions of the mill and shingle industries.

Q. You say, you qualify it, suppose you give it.

A. I would not want it considered as ever well studied out or anything of that kind.

Q. Well we will admit that.

A. Yes sir, I should think that 25% should come as near as any other figure to my idea at this time.

Q. This little pamphlet which you referred to in your remark to me a little while ago is entitled “The over-worked word “Value”. Do you recognize that title.

A. Yes sir.

Q. Is it the same little pamphlet which you have?

A. Yes sir.

Q. And you are the author of it?

A. Yes sir.

Q. And in this little pamphlet at page 8, under the heading at page 7 “Market value” you use this expression: “The market value of a machine today is one price, and a year later having been superseded by some other invention, it has only a fraction of its

former value, yet the replacement cost would be the same as before". So that statement is true, isn't it?

A. Yes sir, there are conditions where that is absolutely true.

Q. It might happen then that the market value would be pretty nearly nil while the replacement value would still be considerable, as you analyzed those terms?

A. It would not be down to nil, of course, because machinery is always worth something for old iron.

Q. Using that as an illustration, the actual value might be that of junk while the replacement value might be considerable more than that?

A. While they are still using it, I do not think any machine could come down to junk value.

Q. That was between those conditions; I did not want to drive you to that.

A. That is true, to a certain extent.

Q. There might be a very great discrepancy between the market value and the replacement value?

A. Yes sir, there might.

Q. You made this further remark on page 8: "Market values of mill properties are now, and have been for some years, considerably less than the depreciated values, but if there should come a time when for several months or years the market could not be supplied with lumber fast enough to meet the demands, then the market value of saw mills properties, might for a time exceed the depreciated values."

A. That is true.

Q. But under the present condition, for the last six years, the converse of that proposition would be a correct statement?

A. Yes sir.

Q. That the market values of milling property, including shingle mill properties, would be much less than the depreciated value?

A. Yes sir.

Q. That would be true in March 1, 1914, and March, 1912, under general business conditions on the coast?

A. Yes sir. Always taking into consideration that market value is a different thing from the depreciated value.

Q. (Mr. Frost) You made an examination of those plants yourself?

A. Yes sir.

Q. How carefully and how extensively did you make those examinations?

A. Well, I took a list of the machines, and I made a list of the buildings, except the fact that I did not measure any buildings, nor I did not measure any machines. Whenever I could find out the exact size of an engine I did so. I found out the exact size of engines when I could, and when I could not I figured as close as I could from the exterior fittings. I did not make details of the bolts, nor did I measure the belts, nor pulleys, nor shaftings, nor anything of that kind. They are approximate values. And I compared them with other similar plants in our office, our office records, when I came back, to have them in line, as much as possible with other plants that I could compare them with."

The witness further testifies that in examining the engines he did not remove the steam chest covers, or examine the valves or valve sets, to see whether they were rusted or pitted, or remove the piston heads or examine the pistons or shafts or shafting to see whether it was straight or warped; nor in the case of donkey engines, he did not remove the heads from the top of the boiler to examine the tubes; made no cold water test of the boilers to see if they were in a safe, working condition. He admits that his examination was very superficial; admits that a man who wanted to buy a donkey engine would go through all these precautions before purchasing.

The witness was six days doing this appraisal work. His appraisal was independent of the assessor's figures.

On re-direct examination the witness testifies:

That his method of appraisal of these milling properties was not exactly the same as the method adopted

in the cases referred to by him in Chehalis County, not so much in detail; but it was the same method. The witness appraised all the industrial plants that he knew of in Clallam County, except the Olympic Power plant and the Earles mill.

Witness says that his idea of the market value of shingle mills took into consideration the demand and supply of the mills. There have been so many mills which have sold at forced sale that it has brought down the open market price of other mills that have not gone into liquidation.

On cross examination by defendants' counsel, the witness says that his idea of the market value is expressed in his pamphlet as follows:

"The market value shall mean the amount which a man willing, but not obliged to sell, would get from a man willing, but not obliged to buy."

On further cross examination by defendants the witness says that his company is qualified to make appraisal of the market value of such properties as those he testified to, and if appraising property to find its market value instead of its replacement value, would inquire into the supply and demand of the article manufactured by the plant and the profit of the business, (past profits and prospective profits of the business is a line that we do not ordinarily go into), the locality and accessibility of the market and shipping facilities, the accessibility to raw material and cost of labor and all such matters of that kind. Witness did not make that sort of appraisal in this case, did not go into these details. They were asked to make such an appraisal as they made in Chehalis County in the tax cases there, to be used as evidence in the court. The valuations they put upon it was the cost of reproduction.

E. H. Grasty, a witness on behalf of the plaintiff, testified as follows:

He is a broker engaged in the bond, mortgage and loan business. Was conducting this business in Portland, Oregon, in 1913, 1914. Has been so engaged for seven years; during that period living in Portland.

Has done a business of up to a half millions of dollars a year. Witness made three visits to Port Angeles in the year 1914, about February, for the plaintiff. The purpose of his going there was, first, to ascertain the values on real estate in Port Angeles and Clallam county, and also to look into the matter of loans and investments. Witness looked into the matter of assessed valuations in Port Angeles, Sequim and Dungeness. Talked with Mr. Hallahan, the assessor, with reference to valuations in the earlier part of April, 1914.

Q. Just state what that was?

A. I met Mr. Hallahan on account of him being County Assessor, and pointed out to him that the real and assessed valuations of property in Port Angeles,—there was quite a marked difference in the two; that in arriving at the value it was necessary to take into consideration the assessed value. Mr. Hallahan states to me that there seemed to be a difference, but that he had been sworn to do his duty, and he was supposed to assess all property at fifty cents on the dollar, fifty per cent of its value. I pointed out that these assessed valuations were anywhere from ten per cent or under. I asked him if he would mind giving me a letter explaining the difference in the actual value and the real value, and he said that he would, and that he would give it to me that afternoon. That afternoon, before calling on him for this letter, I met Mr. Hallahan on the corner of Laurel St. and Front St., and he was then in company with Mr. Fisher, who was deputy Custom Collector at Port Angeles, and he had been talking with Mr. Fisher about giving me this letter, and Mr. Fisher stated, "Why, Mr. Grasty, Mr. Hallahan can't give you any such letter as you are asking for. It is against the law." I said, "I don't believe there is any such law against giving me a letter stating the truth about any proposition;" and I said, "If there is nothing crooked going on in the assessors office I do not see why I can't have that letter. At that time we talked on general topics, and Mr. Fisher left us. I remained with Mr. Hallahan and pointed out to him the awful difference between the assessed and real value of the

property in Port Angeles. Mr. Hallahan stated to me, he said, "Mr. Grasty, if I were to assess the property here for fifty per cent of its real value, I would break every property owner in Port Angeles, and I have been sworn to do my duty," and he said, "If I were to give you such a letter, it would incriminate myself, and I can't do it."

Q. When was it that that conversation was had?

A. That conversation was had sometime around the middle part of April; I do not remember the date exactly. I think, it was on the 14th or 15th of April that I went there, that I went to Port Angeles, and it was possibly the second day. The first trip there I spent five or six days there, or four or five days.

Q. At that time had you made any inquiry for yourself or for others as to the actual or market value of property in Port Angeles?

A. Yes sir; I had met some of the people in the bank,—I mean, I met some of the business men in the city, prominent business men, I met some of the bank officials and I also met some of the other county officials.

Q. Now, did you announce to Mr. Hallahan, the assessor, that there was any discrepancy between the values that were given you as the market value of these people and the assessed valuation?

A. Yes sir, I did. I pointed out that anyone loaning money on Port Angeles real estate would never make the loans that they required on any such valuations, and unless there was an explanation of why there was such a difference, we could not hope to do any business in that territory.

Q. What answer, if any, did Mr. Hallahan make to that?

A. Mr. Hallahan simply said that he was sorry; that he would like to help me out, but he could not do so under the circumstances.

Q. Did you make any reference to any special pieces of property?

A. Yes sir. Mr. Hallahan pointed out to me, as an instance, the property owned by a man named Morse, on the northeast corner of Laurel St. and First St.

Now, he said, "That property is worth \$15,000.00, but it is assessed for \$800.00 to a thousand dollars." That, of course, was merely one instance of several that came to my attention.

Q. Did he give to you any explanation of why it was assessed at \$800.00 if it was valued at \$15,000.00?

A. He simply said, that there was an agreement among the local people in assessing the property in Port Angeles for what it was actually worth that it would break the property owners. In other words, that it would break them and that he could not do it.

Q. Did he say whether this custom or manner of looking at the assessment situation had prevailed for any length of time in that community?

A. Ever since he had been in office, and that it had always continued. He said, "This custom has always been the practice here."

Q. Did you have any further or other talk with him at different times in regard to the same matter?

A. Yes sir, I did. I had a talk with him—the third visit that I made to Port Angeles I had a talk with Mr. Hallahan, and I had with me Mr. W. A. King of Portland, Oregon.

Q. What time of the year was that?

A. That was in May of 1914, the third visit I made to Port Angeles, in 1914.

Q. Who is Mr. King?

A. Mr. King is from Portland, Oregon, and the son of one of my clients, who I had up there to interest in investments in Port Angeles, and especially, bonds on the Elks Lodge.

Q. Where did Mr. King live, the Senior?

A. In Portland, Oregon.

A. And his son went down with you?

A. Mr. King's son went down with me, yes, sir.

Q. You say that he was present at this conference between you and Mr. Hallahan which you are now about to detail?

A. Yes sir.

Q. What was the result of that conference?

A. We called on Mr. Hallahan and I introduced

Mr. King as one of the gentlemen whom I had up to interest in property there, in investments, and I asked him if he would mind explaining to Mr. King and myself the things that he had formerly taken up with him regarding the method of assessing property in the county, and the values of property, both actual and assessed; and he did so. He proceeded to tell us—I said to him, “There is quite a difference. I would like for you to explain to Mr. King the difference between the assessed and the actual value of property in the county.” “Well,” he said, “we grade the property in the county, and assess it accordingly. Now, he said, “We assess timber in the county more than we do anything else.” And I asked him why he did that, and he said, “that the reason they assessed the timber higher than they did anything else was because on account of the great fire protection in this state; that the timber owners were holding their timber there, and that they were assessed these high taxes in order to make them operate; in other words, to build logging roads and to cut their timber.”

Q. Did he say as to any time during which the policy had prevailed in Clallam county.

A. Well, he said, that that had been their custom right straight through. In other words, they placed the burden of the taxes on the fellow that could afford to pay them. He also stated that the reason that the taxes on the real estate in Port Angeles was so much lower was because of the certain amount of the funds, taxes that were taken by the county and the state for their share, contributing their share for the running expenses of the state and county, and the reason they kept their local taxes down low was for the purpose of depriving the state and the county of taking away from Port Angeles proper any more money than they could possibly help.

Q. Did you, or did you not, finally get a letter from Mr. Hallahan?

A. I didn't get a letter from Mr. Hallahan. I stated to Mr. Hallahan that I was very sorry that he could not see his way to give me a letter, because

he, being the county assessor, it would have a great deal of weight and it would confirm what had already been stated to me by business men and other county officials; and he replied again that he had sworn to do his duty and he could not give me such a letter for fear of incriminating himself. And he produced a little book which had in it the manner of taxation. In other words, he showed us a great many things, and he pointed out his method of taxation, and why that was done and all about it.

Q. Do you recall any besides this Morse building now that he referred to?

A. Well, the Elks property was one of the properties that we took up, the question of the Elks property, and that, of course, was stated to me as a certain value by the committee from the Elks. And later it was appraised by some of the banking fraternity; and Mr. Hallahan stated to me that he thought that the assessed value and the actual value were very far apart. I think that one or two lots were assessed for about \$200.00, when the actual value, as he claimed, was in the neighborhood of eight to ten thousand dollars.

Q. Was that comparison, or the amount that was claimed to be the value stated to you by Mr. Hallahan?

A. It was stated by me to Mr. Hallahan. It was stated by me to Mr. Hallahan for the purpose of getting his views of what the real and actual value was.

Q. What explanation did he make of the discrepancy between the two hundred and the ten thousand dollars?

A. Well, he said, it had been the custom and he just let it go along at that.

Q. Did you have any talk while you were down there on any of those occasions with Mr. Hansen?

A. Well, I did have several talks with Mr. Hansen.

Q. That is Mr. Hansen who was the county commissioner?

A. Who is the chairman of the board of county commissioners.

Q. What were those conversations?

A. Those conversations were substantially the same as with Mr. Hallahan. I asked Mr. Hansen if he would please explain to me the wide difference between the actual value of Port Angeles real estate and the assessed value, and Mr. Hansen stated to me, "Mr. Grasty, we make it our business here to soak the outside fellow, and the fellow that has got the more money, and with our local people we keep these assessments down. We had made it a rule to keep the assessments down, the taxes of Port Angeles property." He said to me, "We have a lot of timber standing in this country, owned by eastern interests," and he said, "It is our purpose to get after those fellows and soak them heavy taxes so they will begin operations, and it will all benefit Port Angeles."

Q. Did you ask Mr. Hansen for any letter explaining the discrepancy in the supposed actual value of the properties and the assessed value?

A. I did.

Q. Did you get any such letter from him?

A. Mr. Hansen gave me a letter explaining the methods of taxation. He also pointed out to me that the people in Port Angeles made it a rule to see that the county and the state did not take too much out of the local funds for their proportionate amount of state and county expenses.

Q. I will ask you to look at this letter Mr. Grasty; did you receive that letter through the mail?

A. This was handed to me by Mr. Hansen.

Q. Where abouts?

A. At Port Angeles, in his store.

MR. PETERS: We desire to introduce this in evidence as plaintiff's Exhibit "L."

THE COURT: It may be admitted.

(The letter referred to admitted in evidence, and marked Plaintiffs Exhibit "L" and read to the Court by Mr. Peters.)

Q. Did Mr. Hansen say to you how long that

method of taxation and equalization had prevailed in Clallam county?

A. He stated to me that it had always prevailed there; that they made it their business to see that it was done in just that manner.

Q. How many talks did you have with Mr. Hansen on this subject?

A. I had three or four different interviews with Mr. Hansen, as I remember it.

Q. Where were they?

A. They were in his store, and in the committee meeting of the Elks Lodge.

Q. Did you make any statement during any of those interviews to Mr. Hansen as to what you were informed was the market value, or supposedly actual value of property there, of Port Angeles real property?

A. Yes, sir, I did. I told him I had understood that these properties were worth a certain amount of money, and that there was such a discrepancy in their actual value, and their assessed value that it naturally called for an explanation from some one who knew.

Q. Do you recall discussing any other special pieces of property other than those that were mentioned in his letter there?

A. Well no, not specifically; just talked it generally.

Q. Did you go about the city or the county with Mr. Hansen?

A. No sir, I did not, except on his own property there that he had sold to a Mr. Hines; I believe he had sold the piece of property on which his store was located. We had a conversation regarding that.

Q. That was Port Angeles property?

A. That was Port Angeles property.

Q. Did he tell you anything about the value of that?

A. Yes sir, he said that he had sold that property for \$50,000 and that it was assessed for twenty per cent of its value, and the reason that that was assessed for twenty per cent of its value was because it had an income of about \$6000 a year, it was shown

that it had an income of about \$6000 a year, being improved,—the Post Office—It is known as the Opera House Block.

Q. Did you have any talk with Mr. Babcock the treasurer of the county.

A. Yes sir, I did.

Q. Where was that?

A. I had several talks with Mr. Babcock in the bank the Port Angeles Trust and Savings Bank, on the street, in the restaurants, and automobiling.

Q. Take the first of those occasions, when was that?

A. The first trip I made to Port Angeles, which was sometime in the middle of April, I met Mr. Babcock and the same question of assessed and real values of Port Angeles real estate came up; and he being the county treasurer, I thought that he would be in a position to give me some authoritative information regarding the subject, which he kindly did. And Mr. Babcock pointed out to me that the property in Port Angeles had never been assessed for what it should have been, or on the basis of its real value; that the real value of Port Angeles real estate could not be arrived at basing the judgment on the assessed valuation. The assessed valuation had nothing to do with the real value of the property; that it had been their custom to hold taxes down in the county.

Q. Was there any reference made to the method of assessing the timber lands in that county by Mr. Babcock?

A. Not at that interview. There was no reference made to that, except on one morning when Mr. King was with me. Mr. Babcock very kindly took Mr. King and I for an auto ride, showing us the territory adjacent to Port Angeles, that is, the logged off land, and some of the farming country, the Elwah River, and some scenery; and he drove us over the city in a brief way. And on this trip I remarked to Mr. King —

Q. Was that in the hearing of Mr. Babcock?

A. Yes sir. I remarked to Mr. King that if Ore-

gon had the roads that Clallam county had they could be very proud of them. Mr. Babcock replied by saying that "Clallam county has a great deal of wealth and especially in its timber, and the taxes against timber here is very high." He said, "These roads will be built out of the funds that we derive from taxing the timber people." And I remarked, after he got through, "Yes, I so understand from Mr. Keeler of Sequim." I represented that Mr. Keeler had informed me that the reason the people in Clallam county had voted to build such fine roads was on the strength of being assured that the timber owners in the western part of the state would be taxed sufficiently to pay for these roads, and that it would not come out of the pockets of the local people.

Q. Was that statement made to Mr. Babcock?

A. That statement was made to Mr. Babcock and Mr. King. In other words, I simply referred to that on account of Mr. Babcock referring to their plans with regard to building the roads, and how easily the timber (improvement) bonds were voted to make those improvements.

Q. Did Mr. Babcock assent to that, or dispute it?

A. He did not dispute it.

Q. (Mr. Riddell) This is your statement which you made to Mr. Babcock?

A. Yes sir, that is my statement made to Mr Babcock.

Q. (Mr. Peters) Did you ever have a letter from Mr. Babcock?

A. I did.

Q. By the way, did Mr. Babcock know at this time that you were inquiring for the purpose of finding the discrepancies between,—what you took to be discrepancies between the supposed market value of real estate down there, and the assessed value?

A. Yes sir, he understood that I was trying to ferret out the true status of affairs regarding property values, and he was assisting me along those lines, and explained to me the difference, the discrepancy.

Q. (The court) In this remark you made to him, you simply said he did not deny it?

A. Mr. Babcock did not deny that statement.

Q. When you told him what the man at Sequim had told you?

A. Yes sir.

Q. (Mr. Peters) He did not say either yes or no?

A. He did not say yes or no.

Q. Now, I hand you what is purported to be a letter dated April 29, 1914, and ask you if this is the letter which you referred to as having been received by you from Mr. Babcock?

A. That is the letter that I received from Mr. Babcock.

Q. Did it come through the mail or through personal delivery?

A. That was handed to me also.

Q. By whom?

A. By Mr. Babcock.

MR. PETERS: I desire to offer this in evidence as plaintiffs' exhibit "M".

THE COURT: It may be admitted.

(The letter referred to admitted in evidence and marked plaintiffs' Exhibit "M" and read to the court by Mr. Peters.)

Q. What further conversation did you have, if any, along this same line with Treasurer Babcock, either during the automobile ride, or elsewhere in Clallam county?

A. On one occasion I had a conversation with Mr. Babcock in company with Mr. King and Mr. Philips of the Port Angeles Trust and Savings Bank, in which I stated to him that I would like to get a letter from the County Assessor, Mr. Hallahan, confirming, together with himself and Mr. Hansen, the statements regarding the assessed and actual value of Port Angeles real estate. Mr. Babcock promised to get me such a letter. And after our automobile ride, the following day, he informed me that he had tried to lead up to asking Mr. Hallahan for such a letter, but he just

could not do it," and I thanked him for his good intentions, and we parted.

Q. Did Mr. Babcock know, to your own knowledge did he know that you were being solicited at that time for a loan on the Elks Building?

A. Yes sir, he did.

Q. Did he know that you were looking around over the values in Port Angeles, ostensibly at least, with the idea of loaning money on the Elks Building?

A. Yes, sir, he did.

Q. Was that to your own knowledge?

A. Yes, sir. That was my own knowledge. Mr. Babcock, was in fact, a great deal of assistance to me along those lines, in arranging for meetings with the Elks Committee, and other gentlemen there.

Witness says that he went over the assessor's books with the assessor, Mr. Hallahan, in his office on two occasions; the first time he was alone; the second time, he was accompanied by Mr. King. Those were the books of timber cruises and the tax rolls of timber cruises. Mr. Hallahan was looking over the books with the witness at the time. The following conversation occurred.

A. There was so much that was said in connection with the taxes—One thing that he said was, "That the timber people were hollering their heads off on account of the taxes that they were being assessed, and that they could continue to do so, but they were going to be assessed, because they never would operate in Clallam county, and that the people had lived there so long, unless the people cut their timber they would always remain in the dormant state that they had been before."

Witness further says that Mr. King was there at the time. Witness had a conversation with Mr. Lotsgezell, county commissioner, which he details as follows:

A. I had a talk with Mr. Lotsgezell regarding the value of property in Clallam county, and in Port Angeles, and he informed me that taxes were higher outside of Port Angeles than in other places in Clallam

county; that the taxing business was in the hands of Port Angeles politicians. He stated to me that they were assessing the timber people rather stiff rates of interest, and that they had been protesting, and he expected some trouble from that source. I asked him if he would mind giving me a letter covering this difference, from his view point between the assessed and the real value of property, and he promised me that he would, and that he would bring it into Dungeness the next morning. This was on Saturday night. At ten o'clock in the morning Mr. Lotsgezell had not put in his appearance, and I telephoned his home, and he replied over the 'phone by saying, "Mr. Grasty, I have decided that I can not give you that letter that I promised you"; and I asked him why, and he stated "That he was afraid of getting himself in trouble; that there were certain things going on that he could not talk about, and that somebody was likely to be gotten across a barrel," and he would explain to me what he meant when he saw me in person, and he could not talk to me over the 'phone.

Q. Did he ever make any further explanation of it?

A. He never did; because I have never seen him from that time to this.

Q. Did you discuss with him in regard to the discrepancy of the valuation and the assessment of any particular property?

A. Not any special property. I did take up with him the matter of the Elks Building, because he, being an Elk was naturally interested in that, and I pointed out to him that in the matter of raising the money on a bond issue that the value of property would have to be appraised, and the people who might investigate those questions discovering such a discrepancy, if the matter could not be properly explained by the proper people, it was foolish to try to obtain a loan. And he simply said, "Well, the matter is as I have stated, and that is that the assessment of taxes are in the hands of a bunch of politicians in Port Angeles."

Q. Did he say whether they were assessing property high or low?

A. He said they were assessing property lower in Port Angeles than any place in the county, and that taxes were too high every where else in the county, both in the farm and the timber districts.

The witness on these occasions talked with certain citizens of Port Angeles, among others Mr. Louis Levy, with reference to real estate values in that city. He details his interview with Mr. Levy as follows:

“A. Mr. Levy pointed out that the actual value of the property had nothing to do with the assessed value; that the assessments were very low, and that their reasons for keeping the assessments down was for the purpose of not allowing the state and the county to take too much money away from Port Angeles in the maintenance of the county and the state. In other words, they made it their business to not let anybody get any money out of the city, or out of them that would not inure to their benefit; in other words, anything that did not inure to their benefit, out of which they would receive no direct benefit.

The witness further says that Mr. Levy wrote him a letter confirming his verbal conversation. The plaintiffs offered this letter in evidence. It is objected to by the defendants on the ground that Mr. Levy is not a county official or a party to the suit in any way.

Plaintiffs offered to show to the court that Mr. Levy is a long time resident of Port Angeles, a large property owner there and that it is the theory of the plaintiffs that there has been a concerted conspiracy on the part of the property owners in Port Angeles to keep men in office who would follow out the scheme of taxing the rest of the county to the advantage of Port Angeles. The objection is overruled by the court and an exception allowed the defendants.

Witness says that Mr. Levy had been a resident of Port Angeles for 20 or 28 years, was in the real estate business; that he had an office at the corner of First and Laurel Streets, and owned the building in which his office was; that he gave the witness an option

on it for \$30,000.00, and said his purpose in selling that was to improve other property he owned in the city.

The letter was admitted and read in evidence and marked Plaintiff's Exhibit "N".

The witness says that he had several conversations with Mr. Levy with respect to receiving applications for loans and that in this connection he took up the subject to the actual and real value of the property which brought out the fact that the assessed value and the real value were so far apart.

The witness also had a talk with Thomas T. Aldwell; with Mr. Lutz, Cashier of the Clallam County Bank; and with Mr. Christenson, Cashier of the Citizens County Bank. The witness details these conversations as follows:

"A. When I first met Mr. Aldwell, I had the opportunity to look over the real estate situation in Port Angeles as regarding the assessed and actual value of property. I pointed out to Mr. Aldwell that I had never known of such remarkable differences in the assessed and the real value of property. Mr. Aldwell informed me that he was not surprised at that, because the people who underwrote the bonds——"

Here the defendants' counsel interposed an objection to this line of testimony, on the same ground as they urged against Mr. Levy's. The objection was overruled on the same ground by the court, and an exception allowed the defendants.

It was thereupon stipulated by counsel for plaintiffs and defendants that it should be understood that the same objection was urged by the defendants to similar testimony being offered by the plaintiffs, a similar ruling by the court and exception to the effect that the conversations were with men who were not county officials, had never been, who have nothing to do with the assessments complained of and have never had and are not parties to the suit in any way and are not charged with conspiracy.

The witness thereupon states:

"A. I pointed out to Mr. Aldwell the real dis-

crepancy between the actual and real value and assessed value of Port Angeles real estate; Mr. Aldwell said "Mr. Grasty, I am not surprised at that because the people who underwrote the improvement bonds that we have just voted and advertised here for regrading this city were amazed at the very low taxable value of the property, and what we claim as its actual value; and he said that several of the prominent business men who were in a position to know the actual values of property in this city, that we prepared a list of the property here in the district, showing its actual value, to which these gentlemen attested the truthfulness of by signing this statement, and it was on the strength of this statement and the property that was listed in the statement that we were able to sell our bonds. Now I would be very glad to loan you a copy of that appraisal valuation of property in Port Angeles in fact, the original, and I will thank you to return it to me after you have finished with it."

Q. What did you do with that list?

A. I submitted that list to my clients, who had instructed me to look into the values of Port Angeles real estate and property.

Q. Was that the list of which the photographic copy was made?

A. I have knowledge that there was a photographic copy of that proposition, that is, that list.

Q. What was done with the original list?

A. I returned that in person to Mr. Thomas T. Aldwell.

Q. Did you ever have any other list than that?

A. I had no list other than that, except merely references from individuals; but I had no list than that.

Q. That is what I am trying to trace.

A. I had no other list except that one list. That was the official list.

Q. What did he say as to the discrepancy himself between the actual values. as to whether there was any knowledge in the community of such list?

A. Mr. Aldwell stated to me confidentially: He said "Mr. Grasty, we are united here in an effort to

hold down our taxes.” He said “Of course we, however — There is a great deal of timber in this county that is not being operated. The people are holding it” and he said “Just confidentially, we are making the timber interest bear the burden of the expense of taxation here, and that is the reason for this condition.” He said: “We have lived here for a long time and there has been no activity and we are aiming to hold the taxable— the taxes, down in Port Angeles”. He said “We have all been working hard, and we have been looking forward to the time when we can get from under this load that we have carried for a long time.

Q. Do you know of your own knowledge whether Mr. Aldwell knew that you were discussing a loan on Port Angeles property for the Elks Building?

A. Mr. Aldwell knew that I was. In fact it was Mr. Aldwell that helped me to get in line to handle the Elks loan, and he knew of my endeavors to secure that issue.”

The witness says, referring to Mr. Lutz, with whom he had a conversation, that he was Cashier of the Clallam County Bank one of the oldest banks there. Witness had the following talk with him:

“Mr. Levy introduced me to Mr. Lutz one afternoon after banking hours, and I was received in the private office of the bank. I made the statement to Mr. Lutz that the assessed value of property in Port Angeles and the real value were somewhat at variance, in fact, so much so, that it would raise a question in the minds of anybody that was going to loan money on property there of the safeness of the loan, and he proceeded to explain to me the reason for the difference in the assessed and the actual value, and was repeating what Mr. Levy had told me. In other words he started to tell me that they had made it their business to keep the assessments on their property in Port Angeles down so that the state and county could not dig into their treasury too deeply; and Mr. Levy interrupted him and said “Mr. Lutz I have already explained that to Mr. Grasty”. And of course our conversation then was merely general. I told Mr. Lutz I would be very

glad if he knew of any one that wanted to borrow money that his bank could not loan—that I would be very glad if he would send them to see me.”

Q. Mr. Christensen, who was he?

A. Mr. Christensen is the cashier of the Citizens National Bank of Port Angeles, Washington.

Q. Was he such at that time?

A. He was such at that time, and had been for a number of years.

Q. He had been a resident of Port Angeles then?

A. He had been a resident of Port Angeles for quite some time.

Q. Where and when did you have a talk with him?

A. I had a talk with Mr. Christensen the first day I arrived in Port Angeles and several thereafter. I think the following morning after I arrived in Port Angeles I met Mr. Christensen walking down from his home to the bank, and he invited me to come in and see him that afternoon, stating that he would be very glad to give me any information regarding the property values in the city of Port Angeles that he could. I went in to see him in the afternoon and he said: “Mr. Grasty, we will take a walk through the business section of Port Angeles, and I will point out to you the different properties here, and will give you my idea of their actual value”, which he did. One property that he pointed out to me was the property owned by Mr. Morse, that I have referred to once before, the corner of First and Laurel, that is the northeast corner. He said “Now this property is worth in my opinion from \$15,000 to \$16,000. They are holding it at \$16,000; but I would say it was worth \$15,000.” I said “Do you know what this property is taxed for?” He said “I don’t know; but it will be a very easy matter to ascertain” which I did later. And I might state that I discovered that it was being taxed for \$800 or a thousand dollars, I have forgotten just which. Then he pointed to the property next door to this corner lot. He said “This piece of property is worth \$10,000.” If I am not mistaken that piece of property had been

improved by a brick building in which Mr. Wilson, the hardware man has a place of business. Next to that property was the Meyer Krups property that Mr. Levy had asked me to make a loan on. The Wilson property was appraised at \$10,000. The Krups property was appraised at \$8000. by Mr. Christensen. Then Mr. Christensen took me further down First Street and pointed out the property owned by Mr. Mando. This property had an unfinished building on it on which Mr. Mando desired a loan, and later came to see me about.

MR. EWING: If the court pleases, I believe under the rules of the Federal Court, that we have to make an objection and save an exception to each particular line of testimony that we object to. I doubt whether the standing objection Mr. Peters referred to will save the record for us.

MR. PETERS: I will agree that the stenographer shall insert it in the record as if you made the objection at the time, and the ruling was made at the time.

MR. EWING: In referenceto this testimony of Mr. Christensen we want a similar objection to that of the testimony of Mr. Aldwell, and with reference to Mr. Lutz.

MR. PETERS: If you do write up the record, it is agreed that you may write the objection into the record as an actual occurrence at the time.

MR. EWING: You will stipulate to that as an agreement in open court?

MR. PETERS: Yes sir.

MR. RIDDELL: With the consent of the Court an exception is allowed.

THE COURT: The stipulation is approved.

(The testimony with reference to the conversation with Mr. Christensen is objected to on the ground that Mr. Christensen is not a county official, and never has been, has nothing to do with the assessments complained of here, and never has had, and is not a party to this suit in any way. Which objection was overruled by the Court and an exception allowed.)

(Witness continuing) On this same afternoon I

told Mr. Christensen that my previous investigation had shown an awful discrepancy in the real and actual value of property at Port Angeles, and the low taxes that were being assessed against the property owners. And he said "Yes, Mr. Grasty, the assessed value of property in Port Angeles is really very low; but there is a condition existing here Mr. Grasty that is very shameful, and that is, the officials here are assessing the timber owners enormous taxes for the purpose of making them operate". He said "They didn't see how, in fact, to let their timber stand and not operate, the taxes would eat the property up in course of a very short time, and that they were being assessed at much higher values in his opinion than the properties were worth. And he said: "It is a shame that condition existed, but that is a fact."

Q. Was there anything said by him, or did you call his attention to the discrepancy between the supposed valuation, and the actual value of Port Angeles city property and the taxes thereof?

A. I did not hear that last.

Q. Was there anything said by him in explanation of the discrepancy between the actual value of Port Angeles property and the assessed value of Port Angeles property?

A. He had no explanation to make on that score at all. He simply pointed out that there was a difference between the assessed and the actual value, and that it was their policy to do that; that it was the policy of the people in Port Angeles to hold their own taxes down, but to raise them elsewhere."

The witness further states that he had a conversation with a real estate dealer by the name of Campbell, who was in the mortgage business and had been in Port Angeles about a year. His office was on the outskirts of the city, on South Front St. Witness understood that Campbell was the agent of Mr. Caine, a large property owner, the man who built the Olympic Hotel. The witness is asked if he had a talk with Mr. Campbell as to values. The same objection was urged by the defendants as to the testimony of Mr. Levy,

the same ruling, and the same exception reserved.

The witness thereupon proceeds:

“Yes sir I had a talk with Mr. Campbell as to values, and Mr. Campbell stated to me that there was a concerted action on the part of the people of Port Angeles to hold the assessed values of property in Port Angeles down, but to place the burden of taxation on the timber people. He said that the timber people had been protesting very vigorously on the taxes that they had been assessed, but that the county had made a cruise of the timber, and they knew the value of it, and that they could holler their heads off, or bring a law suit, and they would never get any relief because those fellows had the bulge on them.

Q. Who did he refer to?

A. Meaning that the county officials had the matters in their own hands, and the timber people could get no relief.

Q. Did you have any talk with Mr. Kealer?

A. I had a talk with Mr. Kealer, yes sir.

Q. Who was he?

A. Mr. Kealer is of the firm of Kealer & Mortland at Sequim.

Q. What business are they in?

A. Mr. Kealer owns the hotel in Sequim and he also owns the telephone company, and other real estate in Sequim.

Q. Was he in the real estate business there?

A. He is also in the real estate business in Sequim.

Q. Did you have any talk with him in regard to the assessments on properties of any kind in Clallam County?

(Defendant objects to the testimony with reference to the conversation with Mr. Kealer, on the ground that Mr. Kealer is not a county official, that he is not a party to this suit, and is not charged with having anything to do with the assessments herein complained of. Which objection is overruled and an exception allowed.)

A. Yes sir, I did. I had a talk with Mr. Kealer

and Mr. Mortland. I will take it with Mr. Kealer first. I had talks with him regarding the values of farm property in and around Sequim and Dungeness, and in fact in the eastern part of Clallam County. Mr. Kealer stated to me that there was no property there worth over \$300 an acre, with probably one or two exceptions, highly improved property, and that it was being assessed too much; that the assessments of property outside of Port Angeles was entirely too high. And I asked him how he knew that these property values were too high, and he stated, "Because he had been called in as a witness in several condemnation suits, or proceedings of some kind, and he knew the values there very well, because he had lived there for a long time."

MR. EWING: This is in Sequim you refer to?

A. This is in Sequim. And he referred to Port Angeles as having the lowest assessment, the property in Port Angeles being assessed lower than any other property in the county.

Q. Did he refer, or did you discuss with him at all, the assessments of the timber interests in Clallam County?

A. I did not discuss that with him. I say 'I did not' I discussed that subject with him, but more especially with Mr. Mortland. Mr. Kealer however, without my referring to the timber, when we were motor-ing from Sequim to Port Angeles, I made the remark that the county of Clallam being so far away that the large population was certainly to be commended, the people were to be commended for being so up to date and for having such fine roads. Mr. Kealer in this conjunction replied "Yes, we certainly have fine roads", but he said "The timber bonds voted for building these roads would not have been carried in the election had we not assured the property owners that they would not have to pay for them but that the timber interests would pay the taxes for the purpose of paying for these roads."

Q. What were those bonds that he referred to?

A. The improvement bonds, road bonds.

The witness also talked with Mr. C. C. Henry, who lived in Port Angeles for a great many years and had considerable property there.

The same objection was urged by the defendants to this testimony as to the testimony of Mr. Levy, on the same ground, with the same ruling by the court and the same exception reserved.

Witness details his interview, as follows:

"A. Mr. Henry submitted to me a list of property in Port Angeles, and also a piece of timber land, timber property in the western part of Clallam County. This piece of property was twenty miles from the ocean. I made it a rule to ask everybody for their tax receipts. I made it my business to ask everybody who applied for a loan to show their tax receipts in order that I might know the actual taxes they were paying. In this connection he was paying taxes on Port Angeles real estate at a valuation of something around ten per cent of its actual value, but over in the timber section of the country he was paying taxes at over fifty per cent of its stated value. And I said to him, "Mr. Henry, why is there such a wide difference in the assessment of the Port Angeles property, they being so low here, and your being assessed at much higher rates in the timber section"? Mr. Henry stated to me "Mr. Grasty, the officials here have entered into an agreement among themselves to tax the timber interests higher than anybody else in the county." He said they had made it their business to hold their taxes at home down, but to make those rich eastern timber concerns operate. In other words, their object in assessing them so high is to make them cut their timber, and thereby bring profit to the people of Port Angeles.

Q. Do you remember any meeting of a committee with reference to this proposed loan on the Elks Lodge in which you were present, Mr. Hansen was present, and Mr. Babcock was present, and some talk was had with respect to the ratio of taxation, and of assessment to the actual values there?

A. Yes sir.

Q. When was that?

A. That was at one of the meetings in the Port Angeles Trust and Savings Bank. I had more than one meeting there, I think it was the second meeting with this committee. In fact, it was the second meeting with the committee.

THE COURT: You said Mr. Hansen and who else?

MR. PETERS: Mr. Hansen, and Mr. Babcock, the county commissioner and county treasurer.

A. They were present with also three or four others. At this meeting I spoke about the awful difference in the assessed value of property, and the real value, and he stated that that would have to be straightened out. I asked him the question,—I asked what the actual assessed value,—what the value of the property was, and Mr. Hansen spoke up and said that the property was assessed for twenty per cent of its value, and Mr. Babcock contradicted him, saying ‘No, it is nothing of the kind’. He said. “The property has always been assessed for ten per cent or less of its actual value. Mr. Hansen did not dispute that; nor did anybody else in the room; but everybody acquiesced in that statement by their silence.

MR. EWING: That established the truth of the statement.

WITNESS: I beg your pardon.

MR. EWING: That established the truth of the statement.

On cross examination of the witness Grasty by the defendants, the witness says that he went to Port Angeles about the middle of April, 1914; was there four or five days; stayed at the Olympic hotel; it was about the 14th or 15th of April. Upon leaving Port Angeles the witness went to Sequim; thinks he was there one or two days, then returned to Port Angeles; thinks he took the boat out of there that night for Seattle and from Seattle went to Portland. He was in Seattle during the morning and left on the afternoon or night train. Thinks he came down from Port Angeles to Seattle either on the Iroquois or a boat owned by the Brewery people; he made the report at Seattle

of conditions found at Port Angeles; thinks he went back to Angeles a week later, possibly ten days later. He made notes in Port Angeles of occurrences there; made a report in Portland; thinks he returned to Port Angeles the last week in April or first of May; was there at that time four or five days.

Witness took a pleasure trip of one day, on Sunday, to Lake Crescent. He was the guest of Mr. Phillips of the Trust and Savings Bank and made inquiries of him as to property values. Witness' three trips to Port Angeles consumed between sixteen or seventeen days. During all these trips he took notes of the conditions he found in Clallam County.

“Q. And from time to time you rendered your reports?

A. That is customary when making an appraisal valuation of property.

Q. You made careful mental notes on all that you found on those trips, did you?

A. I did not only make them mentally, but I made them actually.

Q. So that you could testify in court if you should be called upon to do so?

A. Yes sir.

Q. Now, what was the real object that took you to Port Angeles or Clallam County, when you first went up there?

A. I had two objects in view. In the first place my attorneys, Beebe & Whitcomb of this city, Mr. Beebe had previously spoken to me about Clallam County.

Q. That is the Crescent Oil Company, or the oil company that he is interested in?

A. No. Mr. Beebe is an attorney, he is not an oil man.

Q. I know him. Mr. Whitcomb seems to be interested in an oil well.

A. I don't know about that. Mr. Beebe spoke to me about the country, the possibilities in Port Angeles and that section and stated to me that sometime I ought to go up and look that part of the country over

for the purpose of obtaining an investment. I went there for that purpose. I also went there for the purpose, at the request, of my client Messrs. Earle & Steinert.

Q. I was going to ask you a little bit later who your clients were.

A. Messrs. Earle & Steinert, to ascertain the actual and real value of property in Port Angeles and surrounding territory which I did. Those were the two objects of my visit to Port Angeles.

Q. The first one was merely incidental, however?

A. No, my first visit was not incidental. I went there for the purpose of looking over the situation.

Q. You went there first at the request of Earle & Steinert?

A. Yes sir.

Q. How long have you known Earle & Steinert?

A. About a year and a half.

Q. You never did any detective work for them before?

A. I am not a detective.

Q. You are not?

A. No.

Q. What ostensible purpose had you for going to Port Angeles the first time?

A. For ascertaining the actual values of Port Angeles real estate.

Q. That was your real purpose. I want to know your ostensible purpose.

A. Of my going?

Q. Of your going. Upon what excuse did you first seek the acquaintance of Port Angeles citizens?

A. I had no excuse at all for seeking their acquaintance. It was a building proposition.

Q. What was the proposed building?

A. In Seattle the Elks have a building, the Elks Lodge Building, in which they have their lodge room, and club quarters, and Port Angeles desired the same condition for their lodge.

The witness further says that he knew that the Port Angeles Elks desired a building from Mr. Philips

of the Port Angeles Trust & Savings Bank, who told the witness that the Lodge had been negotiating and desired to obtain a loan wherewith to build a lodge room. Witness did not have this Elk loan in mind when he went to Port Angeles, didn't know such a loan was in contemplation until after he reached Port Angeles. He is not an Elk. The witness had not known Mr. Philips before he went to Port Angeles. The Elks did not come to the witness originally.

Witness has lived in Portland about 8 years; his business is investments and bonds. Witness did not buy any bonds in Port Angeles, and made no loan there. Witness knew what he was expected to do and desired to find when he went to Port Angeles. He went there as an expert on values to ascertain the actual value of the real estate in Port Angeles both the assessed and actual. He knew who Earle & Steinert represented in employing him and received compensation for his services. He does not know where the funds came from that paid him. Witness did not go there for the purpose of touching on timber values at all, but confined his attention entirely to the matter of assessments and realty values of Port Angeles and surrounding territory. On being informed by Mr. Phillips that the Elks wished to put up a building the witness told Mr. Phillips that he would be glad to meet anyone authorized to discuss the subject. Mr. Phillips thereupon made an appointment for the witness to meet a committee of the Elks. Witness thinks he had a meeting that very night with some of the Elks and this meeting was held in the Port Angeles Trust and Savings Bank. Witness did not know at the time that any of the county officials were Elks. At this meeting they discussed real estate values. Witness ascertained how much money they wanted. The Elks wanted \$40,000.

The balance of the witness' negotiations was a matter of figuring on values and equalization, in order to arrive at whether they had sufficient security or not. The witness said he did not give them any \$40,000. They did not give him an opportunity to. He denies

that the amount was afterwards reduced to \$30,000 or to \$20,000.

During all this time he was negotiating with the Elks he was in the employ of Earle & Steinert. Their business was part of what took him up there.

Witness had \$40,000 and more that could have been applied to this loan. He admits that in all conversations with the Elks and with the County officials he made it a point to get their statements in writing, but denies that he intimated the character of the statements that he wanted in writing. Witness was to get a commission of 5 per cent upon this \$40,000 loan if made.

Witness' business title in Portland was "E. H. Grasty Municipal and Corporation bonds. He was not incorporated, and had nobody associated with him; during the last six months he has removed to New York city. His address in Portland formerly was 920 Northwestern Bank Building. He had lived there eight years. He had no partners.

Witness did not do business with his own capital all the time. He had a capital of \$10,000 which fluctuated, sometimes more, sometimes less. His bankers in Portland were the First National Bank. He had a clientel among the banks in Oregon among which he has placed a great many bonds; that was a part of his business to find good securities and underwrite the entire issue. In that way he does not require a large capital in doing business.

Witness had suggested this loan to E. A. King, one of his clients. E. A. King is the father of the man that went to Port Angeles with the witness. Witness also had a firm of builders who were ready to erect the building and take the bonds in payment therefor, provided he would undertake to sell the bonds, J. S. Winter & Co. of Portland.

Witness says the Elks business had nothing to do with the work he had for Earle & Steinert. When the witness went down to Port Angeles he did not know that an action was to be brought for any special purpose. Earle & Steinert asked the witness to make

an appraisal valuation of the real estate and assessed valuation of property in Port Angeles and surrounding territory in Clallam County. Witness in making notes of his transactions did not expect to testify as a witness; did not know why Earle & Steinert wanted him to go down there, but supposed they had some good valid reason. He knew that they had clients who had been assessed excessive taxes but apart from that he knew nothing more. He didn't know at the time that the work which he was doing for them was in connection with any case for their clients. He did know that Earle & Steiner's clients were timber owners.

Witness has had about ten years experience in the real estate business. He didn't know at the time he was up there whether Port Angeles had had a boom or not. The people of Port Angeles had ambitions for the future of that town and they were banking on the state's timber resources to establish their hopes; their hopes were to be realized by making the timber interests operate.

Witness did not get the impression that there was a boom at Port Angeles, but the information that he gathered was pretty generally, that values there were correct. The witness could not exactly reconcile the discrepancy between the real and assessed values as given him but didn't know where to draw the line.

“Q. Your own judgment always counts when you make up your mind; that is the only thing that does count. I will ask you that same thing in another way. Did you believe that the properties which you saw and that you talked of and inquired about had the values that were imputed to them by the people who were trying to interest you in them?”

A. The gentlemen who gave me this information seemed to be men of standing, and I naturally accepted their statements.

Q. (Question read) Did you believe that yourself?

A. Why I simply accepted the statements that were given me. I was not there to believe anything. I simply was there to have the people who were local,

and who knew the conditions state to me what they were.

Q. That was the object, to have those people state?

A. It was not for me to form any opinion.

Q. Do you make your loans upon that kind of information or upon your own judgment?

A. I generally make them upon my own judgment.

Q. Exactly; but you did not in this case?

A. I did not make any loans.

Q. Why?

A. When I found the conditions existing among the city officials and the people who were in authority there, handing it to the Eastern timber people, naturally I did not feel it was a very safe place to make loans.

Q. How did that affect the value of the security in any way?

A. Well, it was simply undesirable.

Q. Why?

A. It was simply undesirable.

Q. Why?

A. For the reasons that I have just stated.

Q. Did it impair the value of the property in any way?

A. That had nothing to do with it.

The witness further says that money seeking investment is not likely to go where conditions are not likely to be favorable.

Q. Now, isn't it a fact that in all the conversations you had with people, who you have testified about this morning, you led the conversations?

A. To those who were interested, and in authority, I naturally asked questions.

Q. Questions which included in themselves the nature of the answer which you wanted them to give?

A. No.

Q. Didn't you direct the conversation in such channels that it would lead those people to inflate the

values of the property that they were submitting to you?

A. No.

Q. You did not?

A. No."

In the matter of making loans the assessed value of the property is the basis to arrive at a fair valuation of the property.

"Q. That is the loan brokers usually go to the assessment as giving a pretty accurate indication of the exact value of the property which is offered as security?

A. That prevails generally. That condition prevails generally.

Q. Where there is a considerable discrepancy between the assessed value of the property, and the prices put upon it by the owners, isn't it fair to presume that the owners will boom their property, or inflate its value?

A. If I knew the value of the property I could answer that question; but I don't, not necessarily.

Q. It would be a natural presumption, wouldn't it, that the owner was inflating his value of the property, or that the assessor was being unfair to the public in making his assessment?

A. The owner might know of his reasons why. You are asking long questions and I want to answer accurately, therefore I want to be sure I have it right.

Q. Where there is a considerable discrepancy between the assessed valuation of property and the values put upon it by the owner, wouldn't it be just as fair a presumption that the owner was booming or inflating the value of his property as that the Assessor was failing to do his duty to the public in making the assessment at the proper value.

A. Your question is so long.

Q. Why did you conclude in the case of Port Angeles that the assessor was wrong, rather than that the owner was wrong in the valuation that was put on the property?

A. I simply accepted the conditions that were

given me from both the assessor and the property owners.

Q. You did not form any opinion about it yourself, at all you just accepted what you found?

A. I accepted the values as I found them there, and accepted the conditions as I found them.

Q. State whether or not in your opinion the security offered you by the properties alone on the Elks Building, taking into consideration all of the conditions obtaining at the time you were in Port Angeles was adequate for the loan that they were asking?

A. I did not arrive at that conclusion. The reason for that was due to the fact that my accountant did not finish his audit when the appraisal was made. There was a difference in the appraisal valuation by the Elks. There was a difference in the appraisal valuation by the committee that was appointed to appraise that property, and it was a matter of negotiation and we did not reach any conclusions based on the security that would be had for the amount asked for.

Q. Isn't it true that in the negotiations that you had with the Elks Lodge up there, on all of the money which they were asking you, or your clients to advance, was to go into the construction of the building?

A. That is very true, but I had never seen any plans of their building; I called for those but they were not furnished me."

Witness says that he had a contractor who had agreed with him that if he would obtain the contract for the erection of the building the contractor would, out of his own funds put up this building, and furnish a bond of \$20,000 guaranteeing the faithful performance of that work, and in the meanwhile take \$5000 of the bonds.

On demand by the defendants, the witness produces this writing.

The letter is addressed to Mr. George Grasty by mistake or stenographic error. Witness does not know why the Elks loan did not go through. Witness was in negotiation with the Elks Lodge about a month or six weeks for this loan. He admits that after the

agreement for the loan had been made he called for other things in connection with the loan, which he says were necessary in underwriting and making any loan. He does not recall telling the Elks people that he would have to have sums of money in addition to the commission and expenses covering it.

Mr. Levy in his conversation with the witness had not said anything about the existence of a boom in Port Angeles or the rapid increase in values. Mr. Levy did state that property values had doubled there but aside from that the witness knows nothing.

Witness says that Thomas Aldwell had voluntarily handed him this list of properties of his appraisal while discussing the assessed and real value of property.

"A. When I asked him to explain the difference between the assessed value and the real value of property he was trying to establish in my mind without a question of a doubt as to the correctness of my contention.

Q. And in that way you got possession of that document. He mailed it to you at Portland?

A. He handed it to me. He did not send it to me by mail. He loaned it to me."

Witness told him he wanted to submit it to some of his clients; he did not tell who they were. Witness had not had it photographed. He gave the list to Earle & Steinert. Witness at the time was discussing with Mr. Aldwell the difference between the assessed value and the real value of Port Angeles real estate. Aldwell knew that the witness was there looking over the field for investment.

"Q. What particular investment were you discussing with him when you got that document from him?

A. We were not discussing any particular investment. There was the subject of farm loans, the subject of city loans in Port Angeles, and also the Elks loan.

Q. How did you happen to be talking to Mr. Aldwell?

A. I called on Mr. Aldwell, as I did on other gentlemen.

Q. You went to him without stating any special object that you had in asking him for the information that you requested?

A. Oh, he already knew what I was there for.

Q. What was it?

A. For the purpose of ascertaining the actual and assessed values of property in Port Angeles.

Q. You used the expression this morning that you were up there trying to ferret out property values. Did Mr. Aldwell know you were up there trying to ferret out property values?

A. I do not know whether I used the word "ferret" or not.

Q. Yes, sir, I wrote it down when you said it?

A. I was up there to ascertain the value of real estate.

Q. And you made no statements to Mr. Aldwell as to the reason why you were seeking information from him particularly?

A. Mr. Aldwell knew.

Q. If he knew what was it?

A. Mr. Aldwell knew that I was up there for the purpose of ascertaining and obtaining the actual, the real value and the assessed value of Port Angeles real estate.

Q. For what purpose. Did he know the purpose?

A. I think he figured that I was going to make some loans there.

Q. Did you explain the purpose?

A. I did.

Q. Did you explain to him it was for the purpose of making loans?

A. Not specifically.

Q. Well generally?

A. He knew what I was there for.

Q. What did you tell him you were there for?

A. To ascertain the values of Port Angeles real estate.

Q. For what purpose?

A. For the purpose of making loans.

Q. That time you told him you were there for the purpose of ascertaining real estate values for the purpose of making loans; you told him that, and you gave him that as a reason in explanation for why you wanted to consult with him?

A. I did not give that as a reason. He knew I was there.

Q. How did he know it? He knew you were there, of course; because he saw you; but how did he know why you were there?

A. I called in to see him. He was out of the city, and his brother entertained me until he got back. He knew I was there and knew what I was there for. He even knew it before I met him.

Q. What did you tell him you were there for?

A. For meeting him. I told him I was there for the purpose of establishing the values of real estate, real and assessed in Port Angeles and surrounding territory.

Q. For what purpose?

A. For the purpose of making loans and looking for investments.

Q. And that was the only purpose that you stated to him that you had in seeking this information from him?

A. That was all.

Q. Your real purpose was to obtain that statement that you finally did obtain, wasn't it?

A. No.

Q. Didn't you know at the time you talked to Mr. Aldwell that objections had been made by those proposed purchasers of the improvement bonds on the ground of the insufficiency of the land values back of the bonds.

A. No, sir, I did not know that.

Q. How did you happen to speak of it a little while ago; when did that information come to you?

A. That information came to me after I had met Mr. Aldwell and had asked him to explain the difference, the discrepancy between the assessed and

the real value. He then informed me that he had a list that had been prepared by himself and other prominent men, and that he would furnish me with that list, that signed list.

Q. You did not represent either directly or indirectly the prospective purchasers of those improvement bonds, did you?

A. That was not necessary.

Q. (Question read.)

A. Do you refer to the Elks bonds, or the improvement bonds?

Q. No, sir, the local improvement bonds

A. Those local improvement bonds were bought by somebody else, not by me.

Q. (Question read.)

A. I had nothing to do with the improvement bonds.

Q. In no way whatsoever?

A. I did not bid on them and they were issued and brought out before I made the trip to the city.

Q. (Question read.) You do not need to dodge that question. There is nothing dangerous in it; why can't you answer it?

MR. FROST: Answer yes or no.

Q. (Question read.)

A. You are referring to two different bonds—Are you speaking about the Elks bonds?

MR. EWING: No, sir, the local improvement bonds for the purpose of use in the sale of which Mr. Aldwell prepared the statement that you obtained from him?

A. I knew nothing about those improvement bonds until I talked with Mr. Aldwell.

Q. Did you directly or indirectly represent the purchasers of those improvement bonds.

A. If you refer to improvement bonds issued by the city I had nothing to do with that, and they were issued before I ever made the trip to Port Angeles.

Q. I do refer to that; and you had nothing to do with them?

A. Nothing to do with them.

Q. And you did not represent anybody that did?

A. No.

Q. In no way at all?

A. No."

"Q. Then why did you take that statement that Mr. Aldwell had offered to you?

A. I simply accepted that statement in good faith, that is, that he had made a statement that was correct, and I accepted his statement. I had no reason not to accept it.

Q. You were rather glad to get that, weren't you?

A. I do not know whether I was glad or not.

Q. What did you do with it?

A. I submitted it to Earle & Steinert.

Q. Did Earle & Steinert to your knowledge represent either directly or indirectly any of the persons in any way interested in those improvement bonds?

A. I do not know that."

Witness further says that Earle & Steinert did not retain the statement long, but it was returned to him and he returned it to Mr. Aldwell. He knew that the list had been photographed but did not tell Mr. Aldwell so.

"Q. Did you ever get the least idea in the world from your own experience as a real estate man that the values put upon properties in Port Angeles by the people that you talked to were the genuine and actual values?

A. Please ask that question again?

Q. (Question read.)

A. In the first place I am not considered a real estate expert.

Q. Go ahead, is that all? (Question read.)

A. I am not a real estate man, so I would not know.

Q. You have no opinion about those values at all?

A. I simply accepted what was given me.

Q. But you had no opinion of your own?

A. Not in these matters.

Q. Notwithstanding that you were going to actually make a loan and had a client who would assist

you in the manner in which you described to make the loan upon the Elks property up there in Port Angeles, and you formed no opinion about the values yourself?

A. When it comes to underwriting a bond issue on a building or a piece of property that is a different thing. I have some knowledge of values.

Q. You were up there though, for that special purpose, to satisfy yourself as to the values up there, you said, is that correct; and yet you never formed any opinion?

A. I went there in the interest of clients, as I stated before, and also to look for business.

Q. In the interest of clients whose interest you wanted to safeguard by using the information that you yourself had obtained.

A. When you find conditions existing in any locality as they did in Port Angeles, it is very necessary to go very cautiously, to proceed cautiously.

Q. What are the conditions that you refer to?

A. The great difference between the assessed value of property and its real value.

Q. To proceed cautiously, and therefore you went there for the purpose of satisfying your own judgment upon the matter of values?

A. I discovered that condition after I arrived there.

Q. You discovered that condition after you arrived there and yet Earle & Steinert sent you up there to discover that condition.

A. They asked me to go up and ascertain the real and actual values of property, and I did so.

Q. But you did not discover the actual condition until you got up there and after discovering it, representing people who wanted to loan money up there, you never formed any opinion as to the values yourself? Primarily who did you go up there for, your loan and investment branch, or Earle & Steinert?

A. I primarily went up for Earle & Steinert?

All of the witness' expenses to Port Angeles were paid by Earle & Steinert. Witness had known Earle &

Steinert about a year and a half; was introduced to them by Mr. Wood Beal, who is interested in one of the companies, plaintiffs, in this case. The witness met Mr. Beal at the Washington Hotel in Seattle in February, 1914; he met him casually, through friends stopping at this hotel. The witness had occasion to go to Seattle from Portland thirty or forty trips last year, and upon one of these trips met Mr. Beal. Mr. Beal asked the witness if he would meet his attorneys and go into some matters with them, and witness said that he would. Mr. Beal knew that the witness was in the investment line and had some knowledge of securities for investment purposes. Witness had had no previous correspondence with Mr. Beal or anybody representing his company. His acquaintance with Mr. Beal extended over a period of three months before he had a meeting with his attorneys.

Witness is asked by the defendants, whether he requested Mr. Hansen, in the letter Hansen wrote him, to put in that letter the 1912 assessment and not the 1914 assessment and answers that he did not.

Witness admits that he asked everybody who approached him for a loan for their tax receipts. He requested to know the actual value and the assessed value, and he requested them to submit their tax receipts because he wanted to see what they were actually paying. This information he desired for both Earle & Steinert and his investment clients, and reported it to both.

Witness does not know anything about the tax laws of the state of Washington or when the taxes are due. Witness understood that the tax receipts shown him were for the last taxes paid; he didn't know whether they were for 1913 or 1912.

Q. * * * Did you ever find any cases in your investigation where the assessed value and the value put upon the property by the property owners was pretty nearly the same?

A. I did not find one instance. The ones that I discovered were anywhere, the assessed value was 8% and the owners value was ten times that.

Q. That was the kind of assessment and valuation that you were particularly looking for, wasn't it?

A. I was not looking for any special valuations. I was taking the thing as they came.

Witness says that he talked with the following people who came to him for loans, in Port Angeles: Mr. Shields, Mr. Morse and Mr. Smith and Mr. Meyer Krupp. There were several others but he does not recall their names. He did not receive letters from any others than those he has already testified to. I asked these people for letters explaining the difference between the assessed and the real value of property. I did not tell them what to put in there. They knew from that request what to put in I suppose.

Witness says that the people from whom he obtained letters in regard to real estate values of property in Port Angeles, had made certain statements to him and he asked them to write a letter to him confirming these statements, because the conditions that existed there were so remarkable and he wanted letters from people who were in authority and could state facts, to explain; he wanted a confirmation of it in addition to their verbal or oral statements. This is the explanation he made to the people who gave him the letters.

Witness denies that he knew at the time that these letters were to be used in a law suit; but he did know that he was going to give them to Earle & Steinert.

Upon re-direct examination plaintiffs introduced the letter written by the contractors to E. H. Grasty as exhibited and the same was admitted as Exhibit O over the objections of the defendants' counsel, on the ground of its being incompetent, irrelevant and immaterial. Exception noted and allowed.

Plaintiffs then introduced the letter of Mr. Christensen to Mr. Grasty, to which objection was made by the defendants on the ground that Christensen was not a county official, had nothing to do with the assessment of taxes and was not a party to the suit. The

objection is overruled and an exception allowed. The letter was admitted as Exhibit "P."

On re-cross examination by the defendants, the witness is asked as to what assessments he understood were referred to in the letters given him, whether for 1914 or 1912. He says that he simply accepted those that were given him; he didn't know anything about the tax laws; didn't know that property was assessed biennially; didn't know that the assessment rolls for the year in which they were made up are not completed and delivered until the first of August of that year.

RE-DIRECT EXAMINATION

BY MR. PETERS:

Q. When you went into Mr. Hallahan's office as assessor, and asked for the assessment roll did he tell you what roll it was, for what year?

A. No.

Q. What did you ask him for?

A. When I went into his office I merely looked over his assessment rolls.

Q. What rolls did you ask for?

A. I did not ask for any special rolls.

Q. Did he tell you they were the rolls of 1910, 1911 1912 or what?

A. No sir, he did not tell me. He simply says: "These are the assessment rolls."

Q. That is what he said?

A. Yes.

Q. These are the assessment rolls?

A. Yes sir.

Q. And these were the ones that were exhibited to you and these were the ones that were in the office at the time?

A. Yes sir.

(Witness excused.)

W. A. King, a witness produced on behalf of the plaintiff, testified as follows:

That he is 32 years of age, was born and has ever since lived in Portland, Oregon; is the son of E. A.

King, referred to in the testimony of E. H. Grasty herein. Mr. King senior was also born and has lived continuously in Portland. The witness is Assistant Manager of the Portland branch office of the American Surety Company; was acquainted with Mr. Grasty in 1914; accompanied him to Port Angeles in May of 1914. On the first day there they met several of the business men. Witness went there at the request of Mr. Grasty who said there might be some investments there that would interest the witness' father; that Mr. Grasty had asked the witness' father to go and found that he could not and so Grasty wanted witness to go, and report and also said that he might wish the witness to corroborate a report which he would make of the assessed and appraised value of property down there. Mr. Grasty did not tell him what the information was wanted for, nor did he know that any law suit was involved.

“Q. When you went to Port Angeles in May what occurred?

A. Well, the first day, as I remember, we spent— Mr. Grasty was looking up this Elks loan, the bonds that were to be issued in building the Elks Building, and we met several people. On the second I believe Mr. Babcock called for us at our hotel, by prior arrangements, and we went with him for an auto ride around Port Angeles.

Q. Was there anything said at that time by Mr. Babcock with reference to discrepancies between the assessed value and actual value of property in Port Angeles during that ride?

A. As I remember, nothing only the assessed value of Port Angeles was low, the taxes on the property was low in the city. And the only reference he made to the difference in the taxes to inside property, on the city property, and on property outside, was when one of us remarked about the good roads. He said that they could afford to have good roads—not “afford to” but they meant to have good roads, that the natural resources of the county were great, lots of timber, and the taxes from the timber contributed largely to

the building of roads, and that they had the building of additional roads in contemplation.

Q. Did you have any talk with Mr. Hallahan or were you present with anyone talking with Mr. Hallahan, the assessor?

A. Yes sir.

Q. Was he on this automobile ride?

A. No sir.

Q. Where was that talk?

A. In Mr. Hallahan's office.

Q. Whereabouts?

A. In the court house. We were there the forenoon.

Q. What was the conversation?

A. Mr. Hallahan was in his office when we called shortly before noon, and we were talking about the method of assessing the property. Mr. Hallahan said to us that the property was graded for the purposes of assessment. He said that "the timber was assessed higher than any other class of property, and for the purpose of making them operate." He said "If it wasn't necessary for them to pay high taxes they would be content to leave the timber standing in Clallam County and cut elsewhere. They would leave the timber in Clallam County until the last because of its fire protection, the excessive rainfall in the timber belt diminishing the probability of loss from fire.

Q. What affect it at all did he say this was going to have upon their operating and high taxes?

A. He said that they could not afford to pay the high taxes without operating; that that was the purpose of forcing them to operate.

Q. You say this was in May that you were there?

A. I was there on the 14th and 15th day of May, 1914.

Q. Were you thereon any visit with Mr. Grasty?

A. No.

Q. By the way, was your father at that time a man of means?

A. Yes sir.

Q. What if any connection did Mr. Grasty have with his affairs?

A. Mr. Grasty was handling some of his business and his stocks.

Q. Generally what was your father's financial and probable responsibility at that time?

A. I should say in the neighborhood of a million dollars, close to a million dollars.

On cross examination the witness testified that he does not know much about realty values himself; that was his first visit to Port Angeles. He did not know very much only what was told him about the future prospects of the town.

“Q. And could you form an opinion from what you saw there as to whether or not the actual values of property were anywhere near the figures that were put upon them by the people that you talked to?

A. Oh, I would not rely upon an opinion that I formed at that time because of the briefness of the visit there. I only know what they told me of the values.

Witness' business is surety bonds. He has some idea of property values in Portland. In going into a town like Port Angeles and getting an idea of values there, witness would have to rely upon what was told him by the residents. Witness would rely largely upon this information and the assessed valuation placed on the property.

Witness does not know whether the properties in Port Angeles that he looked at were worth anywhere near the figures that the owners put upon them, as submitted to him, or not. He would not consider himself competent to place values upon property there.

Witness was not connected with Earle & Steinert in any way; had no business or negotiations with them.

Q. You went up with the genuine purpose of looking after the possibility of your father making investments up there?

A. I went at the request of Mr. Grasty who said there may be a possibility of making an investment there.

Q. You had a genuine idea in your mind of such a possibility yourself; that is what you went there for?

A. I could not be in a position to report to my father if anything looked—if any investment presented itself, I thought I would be interested in it.

Q. With that idea in mind, having gone up there for that purpose you must have formed some idea of the values up there; I asked you what they were?

A. As I remember there was nothing materialized that I had occasion to put up to my father.

Q. That is true, nothing came of it, but property that was called to your attention was a possible investment for your father, I want to know whether in such case as that your own opinion is that the property was actually worth anywhere near the values that were placed upon it by the people that showed it to you?

A. As I say, we talked with quite a number of people and their statements were concurring more or less as to the value.

Q. What was your opinion about it? Do you think the values were actually there that they told you were there?

A. I would not have formed an opinion unless there had been a definite investment that had presented itself and that my father would rely on my opinion as to the value of the property.

Q. Mr. King, isn't it a fact that if you go into a strange town and get to talking about realty values and a man tells you here is a lot that is worth so much you instantly form a conclusion in your own mind, whether you are a real estate man or not, whether that man's figures are correct?

A. We always have some idea of the value of property.

Q. Wasn't that true of Port Angeles?

A. That was my first visit to Port Angeles. I knew nothing in the way of what they exhibited. Nothing ever developed.

Q. You went up there for a definite purpose?

A. It may have been a definite purpose.

Q. It was a definite purpose when you went up there, wasn't it?

A. There was nothing definite came of it.

Q. You say you went up there to view for yourself possible investments that might be accepted by your father?

A. Yes, sir, there was none submitted to him.

Q. None submitted to him, but properties were shown to you?

A. Just casually pointed out.

Q. Just casually pointed out. In your opinion were the values of those properties casually pointed out actually equal to the figures that were put upon them by the people that pointed out to you?

A. I said the property was casually pointed out; more in the line of general talk. But it was not pointed out for the purposes of bringing it to my attention as security for a loan.

Q. No matter how it was pointed out, what is your opinion as to the values of properties that came under your observation in any way, or manner whatsoever, as compared with the values put upon those properties by the people who called them to your attention.

A. I formed no opinion.

Q. You did not? You went down there for that purpose and yet formed no opinion?

A. Had there been anything crystallized and put up as security for a loan, possibly I would have looked into it at greater length; but I only stayed there two days as I remember it.

Q. Did you have anything to do with the Elks Lodge?

A. Not at all. I am not a member of it.

RE-DIRECT EXAMINATION

BY MR. PETERS:

Q. Did you hear any conversation on Mr. Hallahan's part either to you or Mr. Grasty during that visit, say, in front of the Sol Duc restaurant, along about noon as to the standard of assessment of Port

Angeles property compared with its actual or market value?

A. Yes sir, I remember that.

Q. What was said?

A. That was after luncheon at the Sol Duc restaurant.

Q. What was said?

A. And the question was asked by Mr. Grasty to Mr. Hallahan, he says "I want to know what the assessed value of Port Angeles property has to do with the real value" and Mr. Hallahan replied "That the assessed value had nothing to do with the real value; that it was assessed for very much less than its real value; that if it was assessed according to its real value it would break some of the property holders to pay the taxes."

Q. Was there anything further said by Mr. Hallahan?

A. He told us of the assessed value on a lot owned by Mr. Morse as being \$1000.00 and what he considered the actual value, \$15,000.

Q. (Mr. Ewing) What he considered, or what Mr. Morse considered?

A. What Mr. Hallahan considered. He says It is worth \$15,000.

Q. Did he give you any other lot that you recall now; did he specify any others giving the comparative value and the assessed value?

A. No sir, I don't recall any others.

On re-cross examination by the defendants, witness says he visited Port Angeles in May, 1914; he has recently refreshed his memory of the occurrences there since that time. He took notes of the conversations at the time he was up there; made pencil notes. Mr. Grasty and he were together on all the occasions during the two days that he was there, when these conversations occurred. They did not make their notes together. Witness made his independent of Grasty. Neither he nor Grasty directed the channel of the conversations with people that they were talking to. They spoke to them very frankly. The first time witness

met Hallahan the assessor, was on the street; he was introduced to him. Grasty invited Hallahan to lunch with them at the Solduc Hotel. Witness admits that he is not in the habit of taking notes of casual conversations that he has with strangers in strange places. He took notes because Mr. Grasty had told him previously that he might want him to substantiate a report that he would make.

In answer to the question as to whether witness really went up there to help out his friend Grasty, he says he went at Grasty's request to look into the possibility of his father's making investments and that Grasty wanted witness to learn about the assessed and real valuation of property there. Grasty said he might want witness to confirm a report that he, Grasty, would make. Witness wanted to make a report to his father if there was a likelihood of his father being interested in those Elk bonds. Witness did not investigate the value of the security offered by the Elks. Nothing came to a point or focus; had there been anything that would have interested his father he would have looked into it. Witness had these notes but didn't know at that time whether or not anything more would come of the Elks bond issue; that was left for further investigation by Mr. Grasty and the committee who represented the Elks. Witness did not know what Grasty was going to use his information for. Grasty told witness that he might want him to substantiate some reports that he would make; not to substantiate them in court. Neither witness nor witness' father owns any timber lands in Clallam County, or is interested in any way with any of the plaintiffs or their lands.

"MR. FROST: If your Honor pleases, at the beginning at the trial of this case your Honor announced that Friday of this week would be the last day it would be possible for you to sit in the trial of the case, and also announced that if the oral testimony was not all taken by that time that the case would have to be concluded by the taking of depositions. We have to suggest that the plaintiffs in this case

have already consumed more than one half of the time allotted by your Honor in the taking of oral testimony and that we have a great number of witnesses here whose testimony we should like to adduce before the Court goes. We think it is only fair to the court, having seen the witnesses for the plaintiff, having had an opportunity to form an opinion as to their credibility, that the defendants in this case should likewise have the opportunity of having their witnesses brought face to face with the Court.

THE COURT: Is there any objections to my reading your depositions?

MR. PETERS: Not at all, your Honor. I think it is a wise provision. But besides the depositions there are two more points that we want to cover, one is of the value of a mill property down there that is not quite ready to report. It won't take more than ten minutes to offer that evidence; and the other is another piece of testimony that we might put in, and it won't take more than five or ten minutes.

THE COURT: Do you want to take it up out of order.

MR. PETERS: We would like to put it in out of order, and I think it would be a very good idea to take up their case now.

The court inquired whether there would be any objections to his reading the depositions which had been taken and filed in the case. To this the parties assented and the plaintiffs thereupon offered the depositions of R. W. Schumaker, S. J. Lutz, Benjamin N. Phillips, James P. Christensen, J. A. Adams and William Garlick, with the understanding that they might be subsequently read before the court if desired. This was assented to by the defendants' counsel and the court.

Thereupon the plaintiffs rested provisionally as above stated.

JOHN HALLAHAN, produced as a witness on behalf of the defendants, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FROST:

Q. What is your name?

A. John Hallahan.

Q. What official position did you occupy during the years 1912 and 1914 in Clallam County, if any?

A. County Assessor.

Q. As County Assessor of Clallam County did you have charge of making a cruise of the timber lands of that County?

A. Yes, sir.

Q. Will you state whether practically the entire west end of Clallam County is timber?

A. I would so state.

Q. It is all timber?

A. Practically all timber, excepting a few prairies.

Q. Did you prepare a map, which you have in your hand, did you color a map?

A. No; the coloring was not done by myself.

Q. Did you examine it?

A. To some extent, yes, sir.

Q. Does that map show the different colors and different ownerships and holdings of timber in Clallam County?

A. Yes, sir; not all of them, but for the most part.

Q. Shows all the large owners?

A. Yes, sir.

MR. FROST: We would like to offer this map in evidence.

(Map marked for identification defendants' exhibit "18" and handed to counsel for plaintiffs.)

Q. In this connection, while counsel is looking at the map, I desire to call your attention to the fact that in the complaint of Plaintiffs' they have given numbers to these various zones in their complaint they have given this interior zone as number 1.

THE COURT: No. 1 is on the Straits.

MR. FROST: In their complaint and in their exhibit attached to the complaint, they place No. 1 on

the interior; in other words, the complaint does not correspond with the map that they have offered in evidence. They designate in their complaint No. 1 zone as an interior zone.

MR. PETERS: That is a mistake.

MR. FROST: In preparing our map we followed the number which plaintiffs followed out in the pleadings themselves so we have the interior zone as No. 1, to correspond with the complaint of plaintiffs. We did not notice that at the time they were offering their testimony.

MR. EARLE: Counsel is incorrect that we numbered it in the pleadings. It is numbered in the exhibits.

MR. FROST: I intended to say in the exhibits attached to the pleadings.

MR. EARLE: And exhibit 1, having to do with the first zone in which the plaintiffs have any timber was naturally numbered in accordance with the manner in which it goes along as an exhibit. Zone 2 is the first zone in which plaintiffs have timber, and it is called here exhibit "B." Zone 1 in which we have the first timber does not correspond with the map.

MR. FROST: This map corresponds with the designations in plaintiffs' complaint, and we regret that we did not catch it sooner.

THE COURT: Is there any objection to this map?

MR. PETERS: When was this map made?

WITNESS: This map was made very recently.

Q. For the purpose of this litigation?

A. Yes, sir, for the purpose of this information to testify by.

Q. You did not make it yourself?

A. No, sir, I did not make it myself. It was done under my jurisdiction.

Q. Who did make it?

A. The gentleman who made the map is present, and the coloring, Mr. Benson.

MR. RIDDELL: It was made under my directions. I will give you my word it is correct.

MR. PETERS: You checked it yourself?

MR. RIDDELL: I have not.

MR. EARLE: You have checked it yourself, Mr. Hallan?

A. It is hard to make a map like that and get it exactly correct, because the lots do not correspond to the sections. It is as nearly like it as you could make it.

MR. PETERS: So far as the lands in controversy are concerned they seem to be placed on, and undoubtedly counsel for the plaintiffs have checked it, they are in proper place with reference to the zones, the sections, and township, doubtless the lands in green here, the McCarty lands, and possibly the lands in blue.

MR. FROST: Lands in green.

MR. PETERS: Then the lands in green of plaintiffs in these two suits are the same?

Mr. Frost: Yes, sir.

MR. PETERS: We don't know anything about the ownership or location—I myself don't, and the pleadings do not refer to it. We do not know anything about the ownership of other holdings in the County. You refer to the Merrill & Ring lands here, and the Goodyear lands here. So if this map goes in at this time we do not wish to be concluded by the admission. I have no doubt that counsel does not propose to hold us by an admission that the ownership is as indicated, but this is illustrative at this time.

MR. RIDDELL: With reference to the lands in controversy.

THE COURT: It will be admitted in evidence with that understanding.

(Map referred to admitted in evidence as defendants' exhibit "18")

Q. (Mr. Peters.) Mr. Hallahan, this is for the 1914 ownership assessment?

A. Yes, sir, there has been no change in the ownership.

Q. And the assessments which are indicated here are the 1914 assessments?

A. The assessments indicated there are the 1914 assessments.

Q. And the assessments for 1912 and 1913 are now shown?

A. Not on that map.

MR. PETERS: The other zones are all similar, aren't they. There is no question about them?

MR. EWING: I think they are.

MR. RIDDELL: Here is zone 3.

MR. PETERS: There is a discrepancy in all of them. These zones, this is zone 2 and this is zone 1.

MR. RIDDELL: And that is zone 4.

MR. PETERS: Our 4 is this large one below.

MR. RIDDELL: It is our 3. Had we better not change your numbers at this time to correspond with ours?

MR. FROST: It is absolutely immaterial, except if we do that you change the numbers in the exhibit in your complaint. You prepared those that you were going to number them as exhibits. You have it in your complaint.

THE COURT: As long as the testimony went in with that numbering, as long as all the testimony has gone to the exhibits this exhibit now offered and the complaint should be amended to conform to this testimony.

MR. PETERS: Yes, your Honor.

MR. FROST: We are very glad to do that.

Q. Mr. Hallan, step down to the map. Will you explain to the court what the various colorings and designations mean on there?

A. The different colorings represent the different owners.

Q. Start in with zone No. 1 at the east end; what is the color in gray?

A. That is the first in black represents the Puget Sound Mills & Timber Company.

Q. Following that West?

A. The red represents the Milwaukee Company.

Q. Does all the red in there indicate the same ownership?

A. Yes, sir. All the red indicates the same ownership as the Milwaukee land company.

Q. The next?

A. The next coloring is what is known as the Merrill & Ring tract.

Q. The yellow?

A. The yellow coloring with the red cross represents the C. A. Goodyear Lumber Company.

Q. And the blue?

A. The blue, I believe, represents the Illinois Timber Company, where it appears on the map.

Q. What is the holdings in the zone that is now known as No. 2, with the pink, with the red across?

A. That is the Bradley Estate Company.

Q. And this out here, I don't know what you call that color—the bluish green; does that represent the Henry & Larson Lumber Company?

A. I believe it does.

Q. And the sand color, with the red across?

A. Represents the James W. Bradley.

Q. And the bright blue in zone No. 2?

A. The very bright blue, the Illinois Timber Company. I gave that before.

Q. I believe you testified that all this portion of Clallam County is substantially a solid forest of timber?

A. Excepting the unsurveyed mountains.

Q. Is there any considerable amount of agricultural land in the west end of the County?

A. Very little, except at Forks Prairie, Quillayute Prairie, and another small prairie a little to the north.

Q. How extensive are those prairies?

A. They are not very extensive.

Q. When I said "this portion" I mean the lands embraced in these zones shown as zone No. 1, 2, 3, 4, 5, and 6; you say that those are practically a solid body of timber; that it is all timber country in there?

A. Practically, yes, sir.

Q. You say that you were in charge of the cruises of timber of Clallam County that were made?

A. Yes, sir.

Q. Haven't you records of that cruise here?

A. Practically, yes, sir.

Q. That is, you have the official records of that cruise, have you not?

A. The transcribed record.

MR. FROST: If your Honor pleases, we should now like to introduce in evidence the records of the County cruises, with the understanding, however, that these are public records, and we may be permitted to substitute, if the Court desires, a certified copy, or transcript, of these records.

MR. PETERS: That is perfectly satisfactory to us, with this understanding; that such transcript shall be furnished upon the demand of the plaintiffs, if such, by reason of the status of the case becomes necessary for the consideration of the case by the present court or any court in review. I want to guard against this possibility; that if we should desire a record made up that they have we should not be hampered with the question of ourselves having to advance the cost of supplying this record and recovering from the defendants abiding the final determination of the costs in the case. That if we desire a transcript of these records that they must be furnished (in view of the Status of the case) that they must then be furnished by the defendants at its expense as a part of the record; otherwise the testimony will not be considered.

MR. FROST: That is entirely satisfactory to us.

THE COURT: You are so instructed.

MR. FROST: These are the official records of Clallam County, and are known as timber records, Vol. 1, and Timber Records, Vol. 2 of Clallam County, and they are offered in evidence as exhibits 19 and 20.

THE COURT: Exhibits 19 and 20 may be admitted.

(The two cruise books marked defendants' exhibits "19" and "20" respectively, and received in evidence.)

Q. Now, Mr. Hallan, I wish to ask you to point out to the Court and explain to the Court how this

cruise was made and these records were prepared and the information and detail that was given upon the record, and in that connection I would like to be permitted to place a record on your Honor's desk so you can examine it.

MR. PETERS: If your Honor pleases, in order that we may keep the transcript of this case in an orderly fashion, it seems to me—and I therefore qualify the admission of these records—if they are to be placed in evidence here as in their entirety, as the two volumes—I have no objection to the information contained in these volumes being offered for the same purpose as the original volumes, I take them to be the original volumes, with the right to substitute transcripts, but I do not think it is proper to introduce the entire volumes, because we do not know what they contain. My idea would be that there is no objection to their competency, and that the witness may refer to such pages, or to such records, such pages of the records as he desires. I take it it would be the same way if in a case in ejectment counsel would bring down one of the records of all the transcripts he has in the certain volumes and place that volume in evidence. We can't tell what may be binding upon us; that which we know nothing about. I have no objection to them taking these records and putting them before your Honor and referring to such and such a page, and such and such a section, and have that go in. I do not want the records to go in wholesale because our attention may be called to what occurs on page 120, and after the evidence is closed we find that 120 contains something we desired to inquire about and meet.

MR. EWING: That is all right. These go in for the purpose of illustration.

MR. RIDDELL: We want the whole thing to go in.

MR. FROST: If your Honor pleases, we will be perfectly frank about these. This assessment, as an assessment of Clallam County of that portion of the timber lands in Clallam County in 1912 and 1914,

having been assailed, and we desire to show to the court by these records, to produce to the court, that the court may inspect them, how carefully and fairly and completely the examinations were made, and upon what information the assessing officers based the judgment that they formed in placing the value they did upon lands. In other words, we have these in here for the purpose of placing before the Court the same things that were before the County Assessor and the Board of Equalization, which enables them to arrive at the values of this timber and other property in Clallam County.

And at the close of this case we desire to make comparison as to the quality and character and quantity of the timber of the different owners in different zones, showing that the timber in one zone is not over assessed as compared with another zone, and for that purpose we desire to take the holdings of zone 1, and compare with the holdings of the plaintiffs in this case, and we would like to have the whole record go before the court, permitting the court to see on what information the assessing officers acted.

MR. PETERS: Now, then, at the present time these two volumes are offered as in their entirety as exhibits in the case, their written records. Unless the thing is qualified at this time, everything in there is taken as evidence for the defense. We do not know what explanation or qualification would be desirable with respect to some of the information contained in here. If it becomes competent with reference to the lands of the Illinois Company or other lands in various claims of the Milwaukee Company, we haven't brought this in yet. However, if they should be competent in that case it might be proper to introduce the pages, the sections that refer to those lands, but they should be called to the Court's attention and to our attention at the time they are introduced.

THE COURT: It is apparent to me that this particular—your claim of fraud is an arbitrary discrimination which amounted to affirmative fraud; that any evidence on the other side going to establish the

thoroughness and conscientiousness with which the inquiry was made as being a basis for the exercise of the lawful discretion, that they would have a right to go as far as they wanted to in building up such a case, and that might include all the land in the County, as far as that is concerned. But it is as Mr. Peters points out, before the end of the defense the particular pages of the record upon which you rely and to which you expect to call to the Court's attention in argument should be pointed out, so if there is any rebuttal of that, Mr. Peters in his side of the case would have ample opportunity to rebut; instead of when the case is closed to have you call attention to something that is not mentioned when these books were entered.

MR. FROST: I am frank to state that I presume we will not refer to over one or two pages in the book; but we want to get the books before the Court, that the Court might ascertain for himself the character of the information these men had before them when they passed judgment upon these values, and we shall point out a section or two. And we have to go into our case, because we have tabulations that have been carefully prepared by Mr. Hallahan, the County Assessor that will show the relative stand of timber, and the relative grades which we expect to offer in evidence, and copies of which we will supply to counsel.

MR. PETERS: Then it seems to me that we ought to stop now and consider it very well, because there are only a few pages to be offered by defendants. Here is something that will run into thousands of dollars if we have to supply this and take this case up, and it would cost thousands of dollars to make the copies. The Circuit Court of Appeals would not consider a case in equity unless every bit of the testimony is taken up.

MR. EWING: You have admitted the cruise, and we have admitted the cruise.

MR. PETERS: Suppose you have admitted the cruise, and Mr. May of the May Lumber Company comes and gives information about his timber; he has not even called attention to it. It is not proper for

him to be brought in, in his case, because there is the whole history of it. There is the description of it as detailed as the cruiser could possibly give who has been down there on the land, everything about it, and we want to have our attention called to it now, so we can meet it. Why, Mr. Frost, if there are but a few pages you want to call the Court's attention to, you proceed in that way, and if you find it becomes necessary to introduce the whole volume you must bring it up again.

MR. EWING: We can't tell you what pages we want in advance of the examination of all our witnesses.

MR. PETERS: I object to putting it in evidence in this wholesale fashion. These are the genuine volumes of these cruises, and we concede that such part as may become competent and admitted may be supplanted by certified copies as outlined and agreed to, but we object to introducing the entire volumes in this wholesale fashion as incompetent.

THE COURT: I think the defense has a right to put these volumes in, but I would suggest as a way out of it, that it is very apparent as to the enormous expense entailed on either side in the event of an appeal of this case. It seems as if certain pages were offered specifically, and then a stipulation made that so far as all the other lands in the County you must, by index, be able to arrive at the same pieces of land, that the same information shown in the record is information gathered and acted upon by the officers in fixing the assessment of these other pieces of land.

MR. PETERS: That is entirely satisfactory, and it seems to me that would answer for the purpose of the record fully, and these books may remain for the purpose of the Court in this case.

MR. FROST: As I stated before, the probabilities are it will not be necessary for us to refer to more than one or two pages, but the prime purpose of putting these in is to offer the best proof possible of the thoroughness and the care and painstaking thought that was given to the cruises and to furnish the Court

with the same character of testimony that the Board of Equalization and the County Assessor had in enabling them to arrive at the value.

THE COURT: As primary evidence, to my mind, you have a right to put in these whole books, and it would be very embarrassing and expensive to either side who lost this case to take it up. But you should make some stipulation about the number of other pieces of lands, and of the books, and something of that kind to summarize.

MR. FROST: If we have our right to offer the whole volumes in evidence, we will at this time be glad to adopt the suggestion of the court.

THE COURT: Try to agree during the noon hour on a form of stipulation to cover that so there can't be any room to disagree about the stipulation.

MR. PETERS: All right.

Q. (Mr. Frost) Mr. Hallahan, will you take this volume and point to section 31 in township 30, north of range 12 west, which is the land of the plaintiff, the Clallam Timber Company in this complaint, just explain to the court how this was made. What does one of these small subdivisions represent?

A. The small sub-divisions represent a ten-acre tract.

Q. And the designations of those is the diagram or map in the upper left hand corner of the page?

A. Yes, sir.

Q. What does the letter F represent; is there a letter F?

A. Fir.

Q. The figures following that represent what?

A. 50 trees.

Q. It represents the number of trees on that 10 acres?

A. Yes, sir, the number of 50 trees.

Q. And following this character, what do the next figures represent?

A. The next figure is the figure A, a small a in there representing the average number of feet board measure contained in those 50 trees.

Q. The average number of thousands of feet, you mean?

A. Yes, sir, in each tree.

Q. Then, in other words, in this ten acres shown you would have 50 fir trees of the average of 15,000 feet to the tree?

A. Yes, sir.

Q. And the next letter is the same?

A. The next letter is the same; that means fir again; but of the smaller stage, the average running smaller.

Q. And this figure would be what?

A. That would be 15 and 8,000.

Q. That would be 15 fir trees?

A. At 8000.

Q. The next letter?

A. The next letter is spruce. There is 4000 feet in that one tree.

Q. The next letter?

A. That is C, which represents cedar, which there is none on that ten acres.

Q. The next letter?

A. Hemlock, H; 50 hemlock trees averaging 2,000 feet per acre.

Q. Does or does not this cruise represent the tree count upon each ten acres in each section?

A. Yes, sir.

Q. Following along to the next diagram near the right center of the page on the top, what have we here?

A. This is lot 2 of section 31.

Q. That represents what?

A. That represents in this lot 2—

Q. Forty acres of land?

A. No, I would not say as to that.

Q. It means what is commonly called 40 acres?

A. It may not in this case. There are lots 1 and 2 there, and probably there are 2 lots in one 40 there.

Q. To make this clear, what have we in the center?

A. This is forty acres.

Q. Isn't it true that the timber, the cruise is totaled up for each forty acres?

A. Each forty acres, or each lot as they appear in that section.

Q. Then taking the northeast quarter of the northwest quarter, what do we find there?

A. We find 5,655,000 feet of fir logs, of fir timber.

Q. And the next?

A. The next we find 45,000 feet of spruce.

Q. And following that?

A. Following that is 890,000 feet of hemlock, with a grand total of all of 6,590,000 feet.

Q. What do these characters represent H-P?

A. H-P represents hemlock piles, or poles, either one, and there are three of them.

Q. The next represents what?

A. H-T represents hemlock ties, and there are in number 125 in the forty acre description.

Q. Then following right along on the top of the map, in the right hand upper corner of the map we have in another plat; state to the court what that is?

A. That is a topographic sketch made by the cruiser in the field of each forty acres there, a double run. In other words, the cruiser started here at the corner, east, the corner here, and back up through the center in these ten acre tracts.

Q. Those are ten acre tracts?

A. Yes, sir, those are ten acre tracts, and traveled one mile and tied up to this corner up here by finding the stake, if possible. He doubled back and came down here and by traversing the section that way, or the reverse way, this way, he would have gone through each forty acres twice.

Q. He would have gone through the center of each ten acres?

A. Yes, sir.

Q. What do the figures on the ten acre tracts represent?

A. The marks in the sketch represent the elevations taken by aneroids.

Q. This is swampy?

A. This green little bushy stuff inside refers to swamp. This dotted line along here is a trail that traverses the section east and west.

Q. Now take this course and come down, what have we here first?

A. We have the total number of feet of 107,885,-000 feet, board measure.

Q. As the total amount of that section?

A. As the total amount on that section excepting this number here.

Q. This is the grand total here, am I correct about that.

A. I think not; that is included.

Q. Does this show the total amount of feet of each variety of timber?

A. Yes, sir.

Q. In making your assessments there you also showed the down, dead timber?

A. Yes, sir.

Q. In making your assessment did you take that into account?

A. That has not been assessed. The fir has not been assessed. The dead and down fir has not been assessed; it is not considered at all.

Q. Coming on down we find the heading here "Percentage of different grades of logs?"

A. Yes, sir.

Q. And then the sub-heading, "Grade"?

A. No. 1, first class logs, No. 2 merchantable.

Q. Taking the fir, what would we have?

A. Forty per cent No. 1 fir; forty per cent merchantable, and twenty per cent No. 3 logs.

Q. And the same classification holds as to the spruce?

A. The same classification holds as to the spruce and hemlock; but different figures, of course.

Q. Then following on down on the right hand side of the page we have under the heading of "General description" what?

A. We have the character of the surface.

Q. As to its roughness, and smoothness?

A. Yes, sir.

Q. What next?

A. The character of the soil, general description.

Q. Next?

A. The character of clearing, improvements, if any, and the general classification of the lands.

Q. Coming over again to the lower left hand corner of the page we have under the heading "Character of Timber" what?

A. We have fir, which gives the quality, old growth, good quality, averaging 160 feet long, smooth and sound, excepting that about 25% shows signs of ground rot.

Q. And we have that same description of all of the timber, have we not?

A. The balance of the different varieties are classified the same way.

Q. Come under the head of "Logging conditions" what do we find?

A. We find the character of the conditions, the ground is the very best. The surface is nearly level, and undergrowth light; very few windfalls; timber to be handled with railroad spurs and donkey engines west to the Sol-Duc River and thence down the river by railroad.

MR. FROST: I think that is all, if your Honor please, except that we will turn at random here.

Q. Mr. Halahan, without reference to the ownership I desire to call to your attention section 15, township 29, range 13, and to the map in the upper right hand corner because this shows a different condition. What does this coloring in yellow represent?

A. That yellow or red coloring represents burnt land, land that has been burnt over.

Q. Is it true that all the timber lands in Clallam County were cruised with equal care?

A. I believe so, yes, sir.

Q. You have the same report of the same conditions, the information concerning all the timber lands in that County?

A. The same information as to all the timber lands west of range 9 were cruised under the direction and supervision of Mr. Duvall. He had absolute charge of the cruising in the field, and the work, I believe, has been very correct and complete.

Q. The valuations placed on the timber land in Clallam County for the year 1914 by yourself as assessor were made upon the basis of these cruises, were they?

A. Absolutely.

MR. FROST: If your Honor pleases this paper diagram will be used at this time to refresh the mind of the witness and we will desire to introduce all we will offer to the Court a completed list, a type-written tabulation that is exactly like this. This contains a lot of erasures, and we are having one prepared.

MR. PETERS: What is it, Mr. Frost?

MR. FROST: It is a tabulation showing the name of the owner, the assessment zone in which his holdings are located, the number of feet board measure of the holdings, the average stand of timber board measure per acre and the quality of timber giving the percentages of No. 1, merchantable and No. 3.

MR. PETERS: Let's see it. (Showing paper to counsel)

MR. FROST: We are only using this at this time to enable the witness to refresh his memory.

MR. PETERS: Is this portion that is lined out to go in, Mr. Frost? (No response)

MR. PETERS: Mr. Hallahan, didn't you get this up yourself?

A. Yes, sir.

Q. Who assisted you in it?

A. I had some assistance from a girl who is working for me, that has worked for me in the office for three years. She assisted me. There were a good many helping me check. I checked all the figures myself.

Q. Where was she taking this from?

A. Taking them from the records, the timber records.

Q. From these records here?

A. Yes, sir, from these records here, excepting the number of feet contained, and the number of acres contained in your descriptions of the several zones. I took them from your complaint. I did not figure those myself, I took them from your complaint, the number of acres that you described in each of the zones, and the total number of feet. They copied them from your complaint. The others I ascertained by tabulation.

Q. You have, for instance, the name of the owner, the Clallam Lumber Company, in zone No. 1?

A. In zone No. one; that would reverse your zones. You have changed them on the map here again.

Q. As it stands on this list at present, however, it appears the zone number, the total number of feet board measure in the holding is 1,231,286,750?

A. Yes, sir.

Q. Where was that taken from, where did you get that from?

A. From your complaint, the figures in your complaint.

Q. The number of feet board measure you took from the complaint?

A. Yes, sir.

Q. Is that true throughout with reference to the Clallam Lumber Company?

A. That is true of all your holdings.

Q. And the Ruddock and McCarty?

A. The Ruddock and McCarty.

Q. And the Goodyear lands you estimated how much?

A. 3,130,750.

Q. Where did you get that from?

A. I took that from the record in that zone.

Q. From these records?

A. From these cruise books. I took a description of their holdings that they had and then I took that

off on an adding machine as I went along and checked the work.

Q. And that was, of course, done with a view of putting the matter in finished shape for your testimony in this case.

A. I presume so.

Q. This has been done recently; it was not done for the purpose of assessments a couple of years ago; but was done recently?

A. Yes, sir; it could not have been done a couple of years ago, because the cruise was not complete to do it then.

MR. PETERS: I do not think this will be competent. I will hand it up to the Court.

THE COURT: It was only for the witness to refresh his memory with, I understood.

MR. PETERS: Your Honor will observe that it is not in the nature of an instrument to refresh one's memory, because they are not transactions he had, and of which he would have himself individually any recollection, personally, without the memorandum. What it is, it is a compilation of data from other people's knowledge and information.

THE COURT: Your objection goes back to the point that it is not the best evidence?

MR. PETERS: Yes, sir.

THE COURT: The books are the best evidence, and you object to the books.

MR. PETERS: Here is what I object to, the quality of each, and the amount in percentage, for instance fir 41,25,13,44, and 48. Perhaps I better take that cruise, a different cruise. In one zone, the quality of timber fir had 35%, merchantable 42%, and No. 3 23%. That is a matter as to which we asked the cruiser, Mr. Duvall, who had actually been upon the ground and who had made the examination. Of course, this man is taking that from the information of another. We are bound by the cruise, the amount of the cruise which we have admitted in our complaint, but as to the quality and character of the timber, that is a matter that ought to be proven. We

have endeavored to prove it by some one who has been on there and seen the timber. For, instance, your Honor will recall that when we put on Mr. Rea, we said, "Did you go down there? You simply went down in an automobile, and you did not see the quality of this timber?" So he testified to the grade of it, No. 1, merchantable, and No. 2, and they excluded him practically on the consideration of that, however. Here is a man that takes somebody else's total. If he is allowed to put this in it becomes the testimony of another, and what we want to get at is testimony from somebody that went down there and examined it, so we can cross examine him and see what he discovered when he went down there. I think this would be misleading and not competent evidence.

THE COURT: You have your choice between something like that and these books. If they made tabulations from the books—the books themselves are the public records, and they are evidence, and you objected to the books because they are so bulky, I have tried to induce counsel to stipulate that in order to obviate the necessity of putting in the books. Then you objected to the compilation and tabulation from the books. We will have to go back to the books.

MR. EWING: Mr. Peters loses sight of the fact, and your Honor must have in mind, that this is Mr. Duvall's cruise, that this computation is made from the cruise of the very man they asked about the percentages. We are taking his written record and making a computation from his record, their own witness, the man who made this cruise.

MR. FROST: It goes further than that.

THE COURT: That would settle this matter of the books. You will have to settle this matter of the books before I can rule on the tabulation.

MR. FROST: They have admitted the cruise twice in open Court. They have admitted the cruise and consented that the cruise go in. Mr. Duvall testified that that cruise was correct as to the physical characteristics of the land, the topography of the country, the character of the soil, the quantity, and the qual-

ity, and the grades of timber standing upon it, and that is about the only proof that we have concerning it. Now, the cruises having been admitted by counsel, they admit it for all purposes. A cruise that does not show the character, quality and the physical characteristics of the country upon which the timber stands would not be worth the paper the cruise was written on.

THE COURT: Since these books are not in the Court does not know what the cruise is, and the Court does not know what they have admitted.

MR. FROST: We are ready to offer the books, but this is a simple way out of it. Here is a tabulated statement which shows the number of acres held by Ruddock and McCarty for illustration, which shows the number of feet per acre, and shows the grades and quality of that timber.

THE COURT: But the objection goes to this. Mr. Peters objects to this tabulation because the witness has made the tabulation from somebody else's reports, and he therefore is trying to testify to the contents of the written report, and that written report is the best evidence and that best evidence Mr. Peters objects to on account of the bulk. I will sustain the objection, and you will have to go back and offer all the books unless you can agree to something abstracting the books, the contents of them.

MR. PETERS: Perhaps, during the noon hour we will get at that. Your Honor can see that it is a tabulation of the entire scope of their defense as to the quality and character of that timber. I feel satisfied that it is not competent. Still, I would go far to admit it if it is going to help in the expeditious presentation and intelligent hearing of this case, but I could not take the chances now.

THE COURT: It would seem that you can take some particular holder and check these books with that tabulation, just like the boss cruiser takes the cruise of one of his sub-ordinates.

MR. PETERS: We can, but here is one bunch of timber of the Clallam Lumber Company—there is 18,000 acres. They figure out the percentage as 35-

22-43. I suppose they must have averaged that from over all the sections in that 18,000 acres.

MR. FROST: If you desire we can give you the adding machine's tabulations. Here they are.

MR. PETERS: We certainly could not try this case with an adding machine. That is what it would amount to.

THE COURT: Suspend this matter then, until after lunch. Maybe you can come to some agreement. Or, you may go ahead until 12 o'clock on some other matter.

Q. (Mr. Frost) (Presenting another sheet to the witness). Mr. Hallahan, can you identify that sheet?

A. Yes, sir.

Q. What is that?

A. That is an abstract of the assessment of Clallam County.

Q. What does that show?

A. It shows an abstract of the assessment for that County for 1912, 1913 and 1914.

Q. Did you prepare this tabulation?

A. I copied it from the records in the assessor's office.

Q. And it is a true and correct abstract, is it?

A. I believe it is.

MR. FROST: If your Honor pleases, this is an abstract such as is prepared every year by the County Assessor showing the total assessment of the County, the number of acres of timber land, the valuation, the number of acres of other improved lands, and their valuations, and the average equalized value of unimproved lands, the number of acres of improved lands, and the valuations, and the average equalized value per acre; the value of improvements, the average equalized value of improvements per acre, and the total value of improvements as to land, the equalized value of the land per acre, and giving the value etc. of city and town lots. (handing paper to Mr. Peters)

CROSS EXAMINATION

BY MR. PETERS:

Q. Mr. Hallahan, how did you get at this abstract of assessment?

A. I have got the original upstairs, if you want to see it.

Q. That is all right, so far as that is concerned, but how did you get at this tabulation?

A. This is a tabulation required by the State Board of Equalization each year of the County Assessor. This is a copy, except one column; that is like the abstract sent to the State Board of Equalization each year.

Q. The total number of acres of land in the County subject to taxation 528,330.60; does that mean of land?

A. That means every piece of land on the rolls.

Q. That includes the lands covered by timber or not?

A. Timber and everything, timber, agricultural, and everything.

Q. It does not cover the assessment of cruised timber, does it?

A. Yes, sir; it shows everything that is in the tax roll in the land cruise, and classified as "acres."

Q. The total assessment of the County, what does that mean?

A. That means the grand total of assessments of real property of the County for that year, 12,312,000.

Q. Real property?

A. Yes, sir.

Q. And the next, the number of timber acres?

A. 372,051.

Q. Is that included in the 528,000?

A. Yes, sir.

Q. The land valuation?

A. That is the valuation placed upon the timber.

Q. That is not the valuation placed upon the—
That is the valuation placed upon the timber as cruised?

A. Yes, sir.

Q. Both acreage and timber standing thereon?

A. Both the acreage and timber standing thereon, yes.

Q. And this?

A. That is unimproved acres; that would be what we call wild land.

Q. Logged-off land?

A. Logged-off and wild land and everything else.

A. And that is the total valuation?

A. Yes, sir.

Q. And that is not included in the 528,000?

A. Yes, sir, all this together make up the grand total.

Q. The average value, the equalized values?

A. Yes, sir.

Q. That is the valuations equalized by the County Board and not by the State Board?

A. That is an abstract submitted to the State Board.

Q. "Improved acres", what does this mean?

A. 52,071.99 improved land acres.

Q. That is the valuation?

A. That is the total valuation of the improved acres, and that is the average per acre.

THE COURT: We will take recess until 2 o'clock P. M. this afternoon.

September 7, 1915, two P. M. trial resumed pursuant to recess, all parties present.

MR. FROST: If your Honor pleases, I think counsel has not yet come to a conclusion about this statement as to the character and quantity and quality of the timber of these various holdings. May we let that go for a little while?

THE COURT: Yes; if you can get together; This is the idea, if you cannot get together the Court will be ready to rule it out, when you find you can't agree.

MR. FROST: It is to facilitate the Court.

THE COURT: If the books were in evidence they would be perfectly proper as to the tabulations to enable the Court to understand what had been brought

together out of the evidence as already in. If the books are not in evidence it is clearly improper because it is not the best evidence. If the books were in evidence, the Court would take it like you would put it in a brief, like you would put it together yourself.

MR. PETERS: That is the way I take to be the effect of it and not as a matter of refreshing the recollection of the witness. It is really a compilation of evidence supposed to be in a shape, which is often done by counsel, and is permissible in that case; not even as the testimony of the sworn witnesses, but to enable the Court to see the evidence in tabulated form. The difficulty in this case is right here, if your Honor please, at least in one respect, and that is that we will take on section, section 19, of township 30, range 12 west. We only own eight out of the forties there, and they have taken the run as tabulated on the entire section, and in another instance we only own five of the forties out of the entire section. This tabulation is based by them upon the section as a unit. In many instances that may make, undoubtedly, a very considerable difference. The books themselves show the matter accurately taken, not only as to forty acre tracts, but to ten acres, so it is possible to calculate it upon a ten acre tract. If it was so done, and the Court can get the lands tabulated as against the Goodyear people say, or ours, that is the interior timber, and the exterior timber were placed on the actual holdings of ten acres it would be a fair estimate. But where we are charged with five of the forties on the run of the entire section it may be very unfair. And I do not see how we would reach it after this tabulation goes in, save by ourselves putting in these books and going to the individual sections themselves. For instance, take here, where a man may run right through the holdings and divide between these two zones, that would be the question of difference, bringing out this same point, not only the difference in zones but the difference in holdings. Wherever we do not own the entire section to be charged with the run of the entire section, it has

to be explained, and we will have to come back into Court with all these books to explain it.

THE COURT: If you can agree, you may call this up later. Make every effort you can to work out some result which would not be too cumbersome to the side appealing.

MR. FROST: We stand ready at any time to offer these books in evidence.

THE COURT: Is there some phase of the case that you can take up now?

MR. FROST: We will go ahead with the direct examination of Mr. Hallahan.

DIRECT EXAMINATION (Continued)

MR FROST:

Q. Mr. Hallahan, did you as County Assessor make a tabulation showing the amount and valuation of the different classes of property in Clallam County?

A. Yes, sir.

Q. Refresh your memory with this tabulation, will you read that purported classification for the year 1912?

MR. PETERS: I object to that as incompetent.

Q. Your assessment for 1912, the abstract assessment rolls for Clallam County for the year 1912?

A. In the year 1912 there was returned 528,130.6 acres of land.

Q. Does that include all land of every character and description that was upon the assessment rolls of Clallam County for that year except the platted lots, or town lots?

A. Yes, sir, excepting perhaps there might be within the town stuff that might be called acreage, that is, blocks.

Q. Did that include all the acreage property proper as distinct from town lots and blocks?

A. Yes, sir.

Q. Go ahead and read the next?

A. Total assessment of the County for that year was \$12,312,973.

Q. The next tabulation?

A. The next tabulation is the number of acres of timber lands, 372,051.19 acres.

Q. And the value of that?

A. The value placed on that for the years was \$8,949,325. The next item is unimproved land, all other unimproved lands, 140,806.88 acres. The assessed valuation placed on that was \$978,080.00; the average equalized value on unimproved land per acre was for that year 6.94 dollars.

Q. The improved land acres?

A. 15,371.99; the valuation placed on the land was \$472,290.00; the average value, equalized value of improvements——

Q. Have you the average value per acre first of the improved land?

A. Yes, sir, the average value of improved lands was \$30.91, and the value of the improvements on the land for that year was \$151,985.00, and the average equalized value of the improvements per acre was \$9.95 per acre.

Q. The next item is——

A. The total value of improvements and land together which was \$624,075.00.

Q. The average equalized value of land and improvements per acre was \$40.86?

A. Yes, sir.

Q. That is all improved lands?

A. Yes, sir.

Q. City and town lots?

A. City and town lots, value of real estate for the year 1912 was \$1,127,968.00; the value of the improvements on those lots was \$218,060.00; the total value was \$1,348,028.00.

Q. That is the total value of town and city lots?

A. Including improvements?

Q. Including improvements.

A. Yes, sir. The total personal property, less exemptions, was \$418,465.00.

Q. Now, Mr. Hallahan, will you go over that——

MR. PETERS: Wasn't there a separate assessment for the banks?

MR. FROST: That is included in the personal assessment, isn't it?

MR. PETERS: He has no separate statement for that?

MR. FROST: There is a separate statement for that.

MR. PETERS: I ask that the entire abstract be read.

MR. FROST: We are not offering the abstract in evidence.

MR. PETERS: I admitted it before, an official compilation under the provisions of the Statute, and ask that it be admitted.

MR. FROST: Then we offer the abstract in evidence.

THE COURT: It may be admitted in evidence. (The abstract referred to marked defendants' exhibit "21" and admitted in evidence.)

MR. FROST: We would like to have him prepare a typewritten tabulation of this so that we may all have copies.

MR. PETERS: Certainly.

Q. Will you read this abstract for the year 1914?

A. In the year 1914 the total number of acres of land in Clallam County excepting city lots was 529,920.06; the total assessment of the County \$14,576,197.00, number of acres of timber land, 356,058.15; valuation, \$10,062,205.00; all other improved land, 15,739.67; valuation, \$901,475.00; the average, or equalized value of unimproved lands per acre for that year was \$7.78 per acre; improved lands number of acres 18,072.26; the valuation, \$594,670.00; the average equalized value of the improved lands per acre was \$52.90; the value of the improvements on the improved acres was \$181,635.00; the average equalized value of the improvements per acre was \$10.05; the total value of the improvements and lands was \$746,305.00; the average equalized value of land and improvements per acre, \$41.29. City and town lots, value of real estate, \$1,803,642.00; value of improvements \$311,215.00; and the total value \$2,114,957.00;

the total personal, less exemptions was \$721,385.00. Do you want me to read the Banks?

Q. Go ahead.

A. All of them??

Q. Just finish the statement.

A. Assessment of the Banks for the year was \$9,200.00.

MR. FROST: If your Honor pleases, we ask leave to withdraw this long enough to have typewritten copies made of it.

MR. PETERS: No objection.

Q. (Mr. Frost) Mr. Hallahan, in making the assessment of the other land in Clallam County as distinguished from the timber lands, did you have maps and data prepared showing the quality, the physical characteristics of this land?

A. Yes, sir.

Q. I will ask you if this book entitled, "Grade Book Acreage of Clallam County", is the official record of that County, containing that information?

A. Yes, sir, partly, not all in that book.

Q. It is not all in that book?

A. No, sir.

Q. There is some that is not in that book?

A. It is in another book.

MR. FROST: If your Honor pleases, we are confronted with the same problem again that confronted us in this; We desire to offer this in evidence for the purpose of showing the character and quality and physical characteristics of certain of the farm lands, and other lands in Clallam County, all of them; but particularly for the purpose of informing the Court as to the means and methods and character of the information that the assessor and assessing officers of Clallam County had in determining the value of the property.

THE COURT: Do you offer the book?

MR. FROST: We apprehend that the same question will arise. This is a large volume, and we would like to offer this with the privilege of substituting verbatim copies of any portions of this book that we refer

to, and withdraw the book in the same manner that we offered to prove the timber.

MR. PETERS: On the question of the good faith of the assessing officers, I take it that the information that they had before them at the time would be of importance to the Court, and an inspection of these books as to what they contained would be, of course, a means of showing that. But the books being in evidence, they would be taken doubtless to be in evidence for everything that they contain. The pages will speak for themselves, as if witnesses with tongues. We might as well march up here twenty men and say "Here is what they would say" and we are not even given what the individuals would say, and we are asked to rebut that. We would be utterly at a loss. We are not bound by what is in those books with respect to lands; but the witness has a right to say what he had before him at the time. I have no objection to that. But I do not want to be bound by these books and I do not think they are competent for that purpose, that they speak for the entire scope of this case.

THE COURT: The objection overruled. I have concluded that the best way to get at this record regarding the objection on account of the bulk, I have to make this ruling; Overrule the objection and I will admit the books unless you agree on a stipulation concerning the abstracting of the contents as to special lands.

MR. PETERS: Note an exception for the purpose of the record.

THE COURT: Exception allowed.

MR. FROST: Then this volume, entitled, "Grade Book Acreage of Clallam County," Nos. 1 and 2 are admitted?

THE COURT: Before you make your offer it should be supported by some evidence that the witness prepared it. I do not understand that is the one he testified about the other day.

MR. FROST: No, if your Honor please, this cruise was the non-timbered lands of the County.

MR. RIDELL: Do you want the witness to testify these are the official books of the County?

MR. FROST: These two books are offered in evidence.

THE COURT: They may be admitted.

(Books referred to are marked defendants' exhibits 22 and 23, and received in evidence.)

MR. FROST: I offer in evidence the abstract.

THE COURT: It may be admitted.

(The abstract referred to is marked defendants' exhibit 24, and admitted in evidence.)

MR. PETERS: I understand that the cruise books are now admitted with the same ruling as respect to the grade books of the land?

THE COURT: Yes. (Referring to exhibits 20 and 21.)

THE COURT: They are admitted.

MR. PETERS: Note the same objection.

THE COURT: Objection overruled. Exception allowed.

MR. FROST: Now, Mr. Hallahan, will you refer to the township and range in which the town of Sequim, in the neighborhood of Sequim, and we are referring now to the lands concerning which the witness Ware testified—— I would like to put this book on the desk of the Court to inform the Court and give the Court the means of information that the County Board of Equalization had. We want the Court to know how thoroughly they did their work in Clallam County (Referring to grade book No. 1).

MR. FROST: Referring to sections 17 and 20, town 30, range 3 (referring to exhibit 22)

MR. PETERS: Are those books paged?

WITNESS: No, sir, they are arranged by section, township and range.

Q. (Mr. Frost) Now, Mr. Hallahan, will you explain to the Court what this topographical sketch contains and means?

A. This section is described in two ways, like all the other sections; There are two sets of characters down here that will briefly set forth the character of

the land at a glance by committing these to memory; No. 1 is black sandy or loam, as it appears here, and they are comparatively level, for instance, there is A.1 which means black sandy, or silt like loam, and comparatively level, and there are 33½ acres of that character of land in that forty acres of description. To get a further reading of the same description it would be in the southwest of the southwest quarter.

Q. That is ten acres, is it, is that a ten acre tract?

A. Yes, sir, this is a ten acre tract.

Q. This is the whole section? (Showing)

A. Yes, sir.

Q. Describe the land?

A. That covers the forty acres cross ways.

Q. The southwest of the southwest?

A. Yes sir, the fenced acres along here and up here and crosses over here, and here is an orchard, and here is a little house, and here is a fence around the house here, and there is another house, and a barn here.

Q. It is more fully described here?

A. Yes sir, it is more fully described here.

Q. What is this, Mr. Hallahan?

A. That is a fence and a lane down there.

Q. And following that?

A. There is a pasture here, and there is a little sidehill here, a kind of a bench, where these dotted lines are, a bench.

Q. This is an irrigating ditch, isn't it?

A. Yes sir. This is a road here, and here is a road.

Q. Go ahead, in your own way then, and give the Court the information.

A. You have asked so much that it would probably take a long time to explain everything.

Q. Explain to the Court what these things mean, and go ahead on the next page?

A. These dotted lines represent slashing, and this is drainage conducting the water out of the land, because it is A-1 most all valley when drained. This is a little building; and here is a road from the main

road into the building. Some of these buildings are described here on this side, the kind of buildings, where they are, how many of them, they are given in number, and each one described, the kind of lumber, the stories, the kind of roof, the kind of lumber in the floors, the rooms, and all the matters that go into a building are enumerated here, the size of the buildings, and so forth, its construction and everything, shingled roof, or otherwise, foundation, whether concrete or rock, or simply blocks; everything that you could think of mostly is enumerated in this compilation of figures over here. This, for instance, the southwest of the northeast is cultivated prairie, rail, board, and wire fence.

Q. (The Court) That irregular mark is the elevation?

A. No, that would be 4-A. It encompasses that acre of land. It would be clear loam, and the A would be comparatively level, as distinguished— here is 4-B here, and C and B two kinds, 15 acres of 4 and C and B.

Q. Explain what C and B mean.

A. It would be these two mixed together; this here.

Q. There in the southeast of the southeast you have 4-F?

A. That is a side hill slope. There are $9\frac{1}{2}$ acres in that.

Q. What is the designation of F?

A. Side hill, too steep for cultivation. That side hill could not be cultivated. It is too steep. We got the number of acres of that side hill right here, nine acres and a half, which in making the assessment we took this forty acres of land and measured up the amount of level land that was in there and took notice of the sidehill, and any other characteristic, and put the value upon each piece separately and added the whole together, and put that assessment upon the forty acres.

Q. Are all of the agricultural and unimproved lands in Clallam County similarly graded?

A. All of the agricultural and unimproved lands are similarly graded up to and including range 8 west, range 2, to range 8 inclusive, west.

Q. And west of range 8 what happened?

A. West of range 8 is taken in the cruise books.

Q. West of range 8 is in the cruise books, in the timber cruise books?

A. Yes, sir, but this same report is going through, but not so elaborate as this. The soil report is not in so elaborately. It would be more timbered. This represents a burnt section, a recent burn, an old burn, a recent burn, a recent, burn, and so forth.

MR. FROST: I think that will be all at the present, Mr. Hallahan, except some more questions I want to ask you later.

WITNESS: This section shows along the river bed and the gravel bars along here. This is the river back here and shows the gravel bars that are practically worthless, where the river overflowed in certain seasons of the year, and we made that reduction and put a minimum value upon the gravel bar, and deducted that from the number of acres. This is the side hill further down. That can be seen from the picture.

Q. Was this land grade book compiled from actual surveys and investigations made in the field upon the land?

A. Yes, sir.

MR. PETERS: This will bring out the question that will come as to the competency of these books along that line; I would like to ask the witness a question.

MR. FROST: All right.

Q. (Mr. Peters) Who made these surveys.

A. The surveys were made by the same people that made the cruise, mostly.

Q. When were they made?

A. The surveys—

Q. When were they made, the surveys, I mean of the agricultural lands, and all the improved lands that you have just been referring to?

A. They were made by the cruisers in the field that had charge of the work.

Q. Did the timber cruisers make a survey of the agricultural lands as well?

A. Yes, sir; but more briefly than these.

Q. More briefly?

A. Yes, sir; more briefly, and under different forms.

MR. FROST: I think the witness misunderstood the question.

MR. PETERS: I think the witness understood the question; what did you understand?

A. I understood you to ask the question if the same method was not applied in cruising the timber land.

Q. What I want to get at is, who made the data, who compiled the date, upon which these books were made up?

A. The several cruisers. Their names are attached to each section.

Q. Did the timber cruisers make the reports for the agricultural lands?

A. Certainly they reported the same thing on the timber.

Q. Let's refer—

MR. FROST: I think I can simplify this.

Q. Did the cruisers make out a report from which this book is made?

A. Yes, sir; the same men, provided they were competent. Some of them, perhaps, were not competent.

Q. When was it they made that out?

A. The dates are given in the book. I can't remember the dates. Each section is dated. It is dated on each sheet and the date shown for any given section.

(Books shown to Mr. Peters by counsel)

Q. (Mr. Peters) Mr. Hallahan, counsel called my attention to section 12, township 30, range 6 west which refers to lot 5, in Kyle's Addition, Inglewood, Crobacher, and Mallett's Addition, what kind of land is that?

A. The land is as it is reported here.

Q. I ask you to tell the Court what kind of land that is?

A. It shows like on the map there.

Q. Look on the map and show where it lies?

MR. FROST: Tell what kind of land it is.

A. Any particular portion of it?

MR. PETERS: I wanted him to tell the Court generally what kind of land this is, whether it is timber land or agricultural land, or prairie land, or city land, or some other kind of land.

A. It is wild land.

Q. Lying right outside of the town of Port Angeles?

A. Outside of the City limits, and some improvements; here the addition is exhibited.

Q. This is sub-divided for residence lots?

A. That was the intention 25 or 30 years ago.

Q. What is portrayed on this page that I have just referred to, section 12, township 30, range 6 West, is the condition as it existed some 35 years ago?

A. Practically, except some timber being cut down; some timber was cut down, and the largest stuff removed and burned for fire wood.

Q. Those dates, do they indicate the time when the section was compiled?

A. That was examined October 13th by John C. Crueger.

Q. Did he make up the notes of that?

A. Yes, sir.

Q. Do you happen to have those notes anywhere?

A. They are not in Seattle; they are in Port Angeles.

Q. Are they filed away somewhere?

A. Yes, sir.

Q. What was done with the notes?

A. The notes were made a matter of record. They were filed as a matter of record, being the original.

Q. What connection did the notes have with this book here?

A. That book was made up from the notes. It is a transcript of the notes.

Q. Did Mr. Crueger report to you these Additions here?

A. Yes, sir. He made out the reports in that way.

Q. He made out the reports after this particular land was sub-divided in that way?

A. No, sir, he did not make out that part; that was colored in afterwards.

Q. That is what I want to get at.

A. That was only a matter of form to put that coloring in there, in looking over the sections you could tell whether it was acreage or platted property.

Q. What did Mr. Crueger's notes show, the information contained on the written page?

A. It showed all the information except the lots and blocks there, in the description of the platted property; he did not report that, because he did not know.

Q. Who extended that information in this book?

A. That information in this book was extended by Mr. Benson who made up the book afterwards. This has not got anything to do positively with the record of the book. It is simply there for information, for general information. If you will look at a section of land you can tell at a glance that there is platted property in there. Then you can go back and look at the platted property in the other books where it belongs. It is a matter that is immaterial in the record so far as the notes go.

Q. It is immaterial so far as the notes go?

A. It is only a guide in there.

Q. But the notes are transcribed on the page on the right hand side here?

A. Yes, sir.

Q. And there is nothing else on this page except what is taken from Mr. Crueger's notes?

A. That is all.

Q. Who was Mr. Crueger?

A. Mr. Crueger was a cruiser, a timber cruiser employed for that purpose.

Q. Employed to cruise timber?

A. Employed to cruise timber and grade land.

Q. Who employed him?

A. He was employed by all, by Mr. Duvall first.

Q. And Mr. Duvall was the timber cruiser, and he is the witness that has been on the stand here?

A. I believe he was here as a witness.

Q. And as I understand you, after these books were made up in this way they were kept in your office?

A. They are not in my office any more. I am not in the office.

Q. During the period that you were there?

A. Yes, sir.

Q. You were assessor, were you not, for the years 1912 and 1914?

A. Yes, sir.

Q. And have been for 1910, have you not?

A. In 1911, 1912, 1913 and 1914.

Q. These books were kept in your office during that period?

A. They were being made up all the time.

Q. And when you went to assess a piece of land you would go to these books and read Mr. Crueger's notes so as to get it just the way that Mr. Crueger had it?

A. We took these books to do our work from, and if it was not all in the books we would compare back to the original notes.

Q. Do you recollect whether any of these books are dated prior to 1913? What would you say was the very earliest of the sheets?

A. The very earliest would be in 1911.

Q. Not prior to that?

A. About May, June or July I think.

Q. And that system has been in the office of the assessor of Clallam County, say from June, at least, since 1911, as far back as that up to the present time?

A. What system is that?

Q. That system of having these lands cruised and the data made of them by such men as Mr. Crueger, and from the notes of Mr. Crueger and the map

and records were made up here and maintained in your office, in the office of the Assessor?

A. Yes, sir.

Q. And when the assessor wants to assess a piece of land he goes to these books made up in that way and gets all the information?

A. That is what I did; I do not know whether anybody else does that or not. That is what I did.

Q. That is what you did?

A. Yes, sir.

MR. PETERS: I move that the books be excluded at the present time so far as the grading of lands and the non-timber lands are concerned on the ground that they are entirely hearsay evidence. Mr. Crueger, or the men who made this data, and compiled them, if he were here with his notes to refresh his recollection, he would be subject to cross-examination to find out the truth and the basis of his information; but he is not here. He takes them up and turns them over to this man and this man comes in here with these books.

THE COURT: We are not trying the absolute verity of these things; but if the assessing officer was mistaken, that is one thing; if there is fraud, that is another thing. The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. PETERS: My point is this, to have it before the Court; I do not think for this reason that we are bound by the statements of these books as records——

THE COURT: Your adoption of the cruise, I take it, went to the timber cruise alone?

MR. EWING: I think we might obviate Mr. Peters' objection by a simple question to the witness.

Q. (Mr. Ewing) Mr. Hallahan, were these men here whose names have been mentioned, Mr. Crueger, and the other men employed as cruisers and the men who gathered the data from which these books were made deputy assessors?

A. They were in a sense. They were assessing

officers of the County. Each one of them took an oath to perform the duties of that particular office during the period he was in the field, and if he should for any reason have violated any of the laws of the State while in the field he was to be subject to prosecution.

Q. And these data, including agricultural lands, and other lands, non-timbered lands, and timber lands, were all compiled and collated under your direction while you were assessor?

MR. PETERS: That is leading.

A. Yes sir.

MR. EWING: We will reframe the question if you want us to?

MR. PETERS: Go ahead, no.

DIRECT EXAMINATION

BY MR. FROST CONTINUED:

MR. FROST: Now, if your Honor pleases, we desire to offer in evidence this tabulated statement that the witness identified in his testimony showing the names of owners and assessment zone in which the holdings were located, the number of acres of timber lands and holdings and the number of feet board measure in the holdings, the average stand of timber per thousand feet per square, the quantity of each kind of timber, and the grades of the timber.

THE COURT: Is this the tabulation that was identified by the witness this morning;

MR. FROST: This is the tabulation identified by the witness this morning.

MR. PETERS: We renew the objection along that line, and I would like to ask the witness from what this tabulation is made up?

A. Do you want me to detail to you the method employed in getting that information?

MR. PETERS: Yes, sir, you have, in order to assess, I understand, some detailed memoranda?

A. I had the figures as I made them here as the memoranda. I took for instance about the Clallam Lumber Company, what we called zone 1 at the time, now changed to zone 2—I took a list of their property, a detailed list of their property, submitted it and took

down the sections, townships, and ranges in which they held property, commencing with one particular place and continuing on through. I took that section of land and put the total number of acres on one side of this page, of the section, and then I took the number of feet of fir timber as set forth on the page there, and then I found the percentages of fir, for instance, fir was graded 40 No. 1, 40 No. 2, and 20% No. 3. I then went and found the percentage of No. 1 fir logs that was in that section, applying the same method I found No. 2.

Q. (Mr. Frost) You mean by percentage of No. 1 fir logs, or number of feet of No. 1 fir logs?

A. The number of feet in No. 1, the number of feet of No. 2, and the number of feet of No. 3.

Q. (Mr. Peters) Do you take from your list there—have you got section 19, township 30, range 12 west?

A. Yes, sir.

Q. Would you refer to that?

A. This is section 19, township 30, range 12. the percentage No. 1 logs in that section is 50% No. 1.

Q. Speak louder, please.

A. This is section 19, township 30, range 12. This is 6,212,000 feet of fir timber; that fir timber runs 50% No. 1, 30% No. 2, and 20% No. 3; and the 50% of logs is simply a matter of dividing that by 2, which gives you the per cent of logs.

Q. You divide what by two?

A. It is 50%, or one half of that.

Q. One half of what?

A. One half of the 6,000,000 gives you 3,106,000 feet.

Q. And the same for the 30%?

A. The same way here; I got 212,000 here.

Q. 1,900,000, or something like that?

A. Yes, sir. Then I proved my figures up by adding my totals together and getting the above figures. I set that figure down here. Is that 3,106,000?

Q. Yes, sir.

A. That proves my figures here, No. 1, and the

same here of No. 2; that is carried on through the section in all the other grades of timber, and we added up those columns.

Q. That is, you took other sections in which the plaintiffs had lands and treated them in the same way?

A. Every bit is treated in the same way in this tabulation.

Q. And added all those together as one that was contained in one of those zones?

A. Yes, sir.

Q. You segregated them according to zones?

A. Yes, sir, segregated them according to zones.

Q. In this section which you just referred to, section 19, township 30, range 12, your percentage of grades of logs 50%, that is based upon the run for the entire section, isn't it?

A. Yes, sir.

Q. How does the cruiser get that?

MR. FROST: I think that is a question for the cruiser. They have admitted the veracity of these cruise books.

THE COURT: If the witness knows he may answer.

Q. (Mr. Peters) How does the cruiser get that 50%.

A. That is a question I could not answer very professionally. Probably, I presume they arrive at that conclusion from their experience as cruisers, and sizing up the timber and so forth.

Q. That is a matter of judgment?

A. I think judgment enters into that a great deal, while I am not technically familiar with the way they arrive at it.

Q. It is a matter to be determined by the personal observation of the timber and the judgment and experience of the cruiser, isn't that true?

A. I think so.

Q. Now, suppose that the Lacey people, as you have designated them here, owned only one forty acres here, or, as in the instance in this case, owned five

forties out of that; how would that work out with respect to your average?

A. They get the percentage of the entire section.

Q. They get the percentage of the entire section?

A. That is the only way percentages can be made.

Q. The cruiser has taken as a unit for that purpose the average of the entire section?

A. He has taken an average of the entire section, I understood.

Q. And if three-fourths of the section ran twice as much in grade proportionately as the other one-fourth, there would be a considerable difference as to the separate ownerships of the one-fourth, and the three fourths, wouldn't there?

A. I do not know anything about that.

Q. You did not make any allowance for that?

A. No, sir, I did not.

Q. Wherever you took a section you considered that the Lacey people, for instance, where you were figuring on the zone No. 2 that the Lacey people owned that entire section, would you not?

A. Yes, sir.

Q. And the cruiser has made no distinction here of any subdivision less than a section in estimating the run of logs?

A. Yes, sir, he does; that for instance is a fraction of a section.

Q. He figures out all there is in that fraction of a section?

A. Yes, sir.

Q. That is the only variation from figuring out the entire section as a unit, isn't it?

A. I think so; that same rule has been applied to all the other companies, and all the other zones just as well as this company.

MR. PETERS: At this time it would be impossible for us to offer an illustration of the number of sections that occur in which the plaintiffs own only a fraction of a section. Here is one we only own five forties. There is another that we had a memorandum

of eight forties. From a casual observation they are scattered throughout the holdings quite generally, I understand. Now, undoubtedly that would make a very uncertain method of estimating, and it will impose upon the plaintiffs practically the production of the defendants case if they are allowed to use this method, because we will have to go back and show the number of instances in which this would not apply as a fair representation, and I do not know just how we are going to do it, if we let them put in the evidence wholesale in this manner. It seems to me it would be causing a burden upon the other party entirely. Now, it seems to me that the way in which the evidence could be required to be produced by us would be to have the witness take the detailed sheets of sections that he has here.

THE COURT: What is it that is estimated for the entire section?

MR. PETERS: The grade of logs.

THE COURT: It has nothing to do with this. That is, the tabulation is based on this.

MR. EWING: The percentages are put in as shown there.

MR. PETERS: That is based upon this, and this is based upon a section as a unit; whereas, our holdings, in many instances are all broken, or fractional sections.

THE COURT: But this 50% comes from considering each of these ten acres.

MR. PETERS: The whole section, yes, sir.

MR. FROST: The plaintiffs' in their own pleadings make these comparisons by zones. They say that the timber within certain zones has been very much discriminated against, and the assessor in following this complaint has taken in all of the instances the grades as shown for each section. He followed this same plan not only in this zone but in the other zones, and this tabulation is for the purpose of showing the relative stand per acre, and the relative grades per acre in the various zones and not upon the holdings of the Lacey people.

MR. PETERS: But your statement is for the Clallam Lumber Company's lands by acreage and by number of board feet and the average stand of timber. Ruddock & McCarty lands, the Merrill-Ring Lands, and the Goodyear Lands, and the Puget Sound Mills & Timber Company's lands is by title and by ownership.

MR. FROST: That is largely for the reason those lands have been referred to by their own witness.

THE COURT: The objection is overruled. If those discrepancies are weaknesses in the exhibit, they are subject to be pointed out the same as any other piece of testimony.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. RIDDELL: Counsel's objection is based on the assumption that the plaintiffs would buy the worst piece of timber in that section to hold.

THE COURT: It may be admitted.

(Statement referred to marked defendants' exhibit "24" and admitted in evidence, a typewritten copy.)

MR. FROST: That is all for the present, Mr. Hallhan. We desire to call this witness later in the case for another phase of the case. For the convenience of the Court we were endeavoring to take the case up in the order in which it was presented.

THE COURT: All right.

(Witness excused.)

R. H. Thompson, witness on behalf of the defendants, being sworn, testified substantially as follows.

He is a civil engineer. His competency in all scientific lines is conceded by plaintiff.

The witness in the year 1891 made an investigation, an estimate and a report of a proposed railroad from the mouth of the Pysht River over to the Sol Duc River by way of Beaver Creek.

The witness says:

I found the possibility of building a road on several different rates of grade depended on the cost per mile which the parties might be willing to expend.

I reported to the company for whom I did the work on two routes, one of which was to have a maximum grade of two per cent, and the other of which was to have a maximum of three per cent. The following is a general course of the road. The mouth of the Pysht river is in section 10, township 31 north, range 11 west. In a line which I had planned I made the same cut-off that is shown on this map in the green line (referring to Remp's map, exhibit 25), through section 10, going to the section line on a course to the west side of the river, and followed on the west side of the river for about two miles and then followed up along near the east margin of section 17, and then cut across and came toward the south branch of the Fork and continued up some distance on the south branch of the Fork through section 29 coming up to the Summit, and the Pysht river in section 35, township 31, range 12, and then from there I followed down Beaver creek practically as shown in this green line on this map into section 29. This line was 21 miles in length and had a maximum grade of two per cent. I took another line which had a considerable amount of three per cent on the Pysht river. I followed into sections nine and eight and into section seven, and then crossed the river and followed very close into the green line which is shown, which crosses into section thirteen and into section 24, and through to the Sol Duc river, with a grade of three per cent.

Three per cent grade is not a difficult grade for logging purposes with a geared engine. From the summit of the Pysht river down to the Sol Duc river I planned making a short section of one and one-fourth per cent grade, just after crossing the summit coming down toward Beaver Lake, but the long detour would reduce that to less than one per cent. This road would be about 17 miles. The cost of these roads would be of the 21 mile road \$320,000; of the 16½ mile road, \$210,000. The witness says that this estimate was for the year 1891. If he were building the road today he would not hesitate to use a 16 or 18 degree curvature as against a 12 degree curvature in

the original estimate as against a 12° curvature and a grade of five to six per cent, which would make the road cost now \$9,500 per mile as against over \$12,000 per mile for the three per cent grade, and over \$16,000 for the two per cent grade of the road as then contemplated.

Q. (Mr. Peters) You made this reconnoissance for Merrill-Ring, did you not?

A. I believe the firm is known as that now.

Q. Merrill, Ring & Brockway?

A. I do not think the name "Ring" was in the company at that time.

Q. Merrill, Bliss & Brockway?

A. Merrill, Bliss & Brockway.

Q. They were the owners as you understood at that time of the timber lands on the Pysht?

A. I did not know anything about the ownership. A gentleman came out here from Saginaw, Michigan, by the name of Young who was instructed to get a careful estimate of the cost of a road from the Sol Duc, and I went with him, with men and went up into the country and stayed there until we were satisfied of our information; as to who it was done for at the time, until I began to write my report I did not know, until today I never saw any member of the firm. A man by the name of Merrill introduced himself to me in the hall a while ago, but I do not know whether that was the man or not.

Q. Mr. Merrill recalls the fact. Did you make this reconnoissance some years ago?

MR. FROST: Who was the one that brought you into this case?

A. I don't know about that, Mr. Frost.

Q. (Mr. Peters) Mr. Merrill was the first man that spoke to you about the case, wasn't he?

A. I never saw Mr. Merrill until about three minutes ago.

Q. I understand that he was the first man from whom you heard your testimony was desired in this case?

A. No, sir, I got notice from Mr. Ewing, the

attorney here, that they had learned I had made a survey there years ago, and they were going to call me into court.

Q. That was after you had had a talk with Mr. Merrill?

A. No sir.

Q. It was not?

A. I never saw Mr. Merrill or anybody except Peter Young to whom that report is addressed until five minutes ago a man who said his name was Merrill introduced himself to me in the hall. This gentleman smiling back here; I don't know whether his name is Merrill, or not.

Herbert H. Wood, produced as a witness for the defendants, on oath testified substantially as follows.

He is county treasurer of Clallam county, and as such custodian of the tax rolls. The witness is asked to state whether other timber owners of Clallam county than the plaintiffs in this suit had paid their taxes for the years 1912 and 1914, objection was made to this on the part of the plaintiff as not competent or pertinent and over-ruled by the court, upon the following ground:

(The Court): "I take it it is following up your pleadings, you waiting in your protest until after other people paid their taxes. My idea is if there is any matter of estoppel, it is not a matter that the county can take advantage of, but I propose letting them make proof on that and see what advantage they can take of it. The objection is over-ruled. Exception allowed."

The witness answered that all of the large timber owners had paid their taxes except the plaintiffs and the Puget Sound Mill and Timber Company. He further testified that none of those timber companies except the plaintiffs in these cases had protested for the year 1913, and none had protested for the year 1914 except plaintiffs Bloomfield and Eldridge and Alsten Fairservice. Bloomfield has 3,000 acres and Fairfax 2,000 acres, and Puget Sound Mill and Timber Company has 13,500 acres.

The tabulation of the witness in the matters testi-

fied to received in evidence as exhibit 27 over the objection of the plaintiff.

Alexander Polson, witness of the defendants, being sworn, testified substantially as follows:

His business is chiefly lumbering and logging. Has been engaged in this business for over forty years and in the state of Washington since 1879. His principal place of operations is Hoquiam. Is familiar with the value of timber and timber lands throughout the

and sell on his cruise. The witness is then asked by the defendant "Having examined those cruises what in your opinion was the market value of the timber in the interior of Clallam county as shown upon this map marked green and known as the Lacey holdings on the first of March, 1912?" Objected to by the plaintiffs as incompetent. The Court: "As shown by the cruises; that is not the basis of expert evidence."

Mr. Peters: "As I understand you have been down and visited this timber in the interior yourself?"

A. No, not examined it expertly, no.

Witness says that in buying timber he does not make it a practice to go personally and inspect every tract of timber but buys upon the cruises of responsible cruisers. The objection is still urged by the plaintiff and overruled by the court and exception allowed the plaintiff.

The witness is cross examined as to his competency by the plaintiff.

He examined these cruises about a week ago. They were in the office of Mr. Frost, the attorney of defendant, and in these two volumes here (Defendant's exhibits 19 and 20).

Q. Did you go over all the land of the plaintiffs?

A. Most all of them, yes.

Q. Did you make any tabulated statement of the lands?

A. I did not.

Q. Did you make any statement of the run of the lands in fir, cedar, or spruce?

A. No more than to examine the report.

Q. That is to say, you looked over all these reports; about how long were you at it?

A. The best part of aday.

Q. How?

A. Nearly a day.

Q. You made no memoranda as you went over it, did you?

A. No.

Q. Will you show me just how you made that examination? Here is one of the books, would you turn to some section and show us just what you would do?

MR. FROST: The court has already ruled upon this question.

THE COURT: Mr. Peters asked to open it up to cross examine him as to the qualifications of the witness.

MR. PETERS: That is the idea.

Q. Open this book up and show me how you made the examination?

A. How do you want me to look at it?

Q. Just what you did; show the court what you did up in Mr. Frost's office, what you did with those books?

THE COURT: He is only asked to illustrate as to one piece?

MR. PETERS: Yes, sir.

A. I took a section of the book and I took the number of feet per thousand of fir, spruce, cedar and hemlock, and looked at the topography of the map of the same to see whether it was rough or level, and I looked at the quality of the timber that was given in the report as I would in any cruise, when I sent a cruiser out to look at it; that is what I am to go by.

Q. You are referring to the page shown here,

section 3, township 31, range 12, on these assessor's books of the timber cruises of Clallam county?

A. Yes, sir.

Q. Then, after having looked at that page you would turn to another page, would you?

A. Yes, sir.

Q. And after having looked at that page you would turn to another page?

A. Yes, sir.

Q. You were engaged at that for about a day, you say?

A. Yes, sir.

Q. What memorandum did you make?

A. I formed an opinion as I would from any cruise.

Q. You did not take a pencil and paper and put down what you gathered?

A. No, sir.

Q. Who told you, or what, if any, list did you have to find out what lands your attention was to be directed to?

A. I think Mr. Frost told me.

Q. (Mr. Frost.) As a matter of fact we had one of those maps, didn't we?

A. Yes, sir, the map was there. We have a colored map of all those holdings ourselves, too.

Q. (Mr. Peters.) Did you look at each one of those sections here and township, and then refer to them in the books?

A. Yes, sir, in a general way, yes, sir.

Q. Could you say to the court that you went over all the lands owned by the plaintiffs in this case?

A. I might not all the forties, no.

Q. How many sections did you examine, would you say?

A. Nearly all the sections, the solid sections.

Q. Nearly all of the sections?

A. Yes, sir.

Q. That was how long ago?

A. About ten days ago, or such a matter.

Q. Mr. Polson, I refer you to section 33, town-

ship 30, range 11; will you state from your memory now any of the data that is contained on that sheet whatever?

A. No, not in particular, no.

Q. Have you in mind any of the data that is contained on any one of these sheets with respect to the plaintiffs' land?

A. These sheets?

Q. In this assessor's books?

A. Not without looking at it.

Q. Can you give a description of the township in which these lands of the plaintiffs lie, take the Lacey people first?

A. No, sir, not without the county's records.

Q. Can you tell how the timber graded in any township, in any section of any township of the plaintiffs' land; do you recall it now?

A. Not without going to the records.

MR. PETERS: I do not think that evidence is of any value whatever. We renew the objection on the ground of the incompetency of the witness.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

Direct examination of witness continued.

The witness would consider the fir, spruce and cedar of plaintiffs' lands in the interior on March 1, 1912, as worth \$2.00 per thousand. He would not consider the hemlock of much value, because it sinks when put in the water. It would have some value if milled on the ground. From ten to 15 to 20 cents a thousand. He is asked as to the value of this holding on the first day of March, 1914. The same objection was made by the plaintiff as to his testimony for the year 1912. The same ruling of the court and the same exception.

The witness then gave it the same value as in 1912. The witness thinks that the Merrill and Ring, Goodyear and Puget Sound Mills and Timber Company timber, in the Straits zone, was of the same value. He further says that he is putting in from a

half million to seven hundred and fifty thousand feet of logs per day and admits his company is operating over a logging railroad a distance of twenty or thirty miles. He pulled three hundred million feet up a five per cent grade. Does not think there would be any difficulty in the operation of a logging railroad 17 miles in length with an adverse grade of not to exceed one and one-fourth per cent, and a favorable grade to salt water of not to exceed three per cent or four per cent. He thinks such a railroad could be operated successfully. Thinks the addition of a few miles of haul, say six or ten miles, after the logs are yarded and loaded on the cars, makes no appreciable difference in the cost of operating railroads.

The witness has bought recently a little timber on the Sol Duc from Eugene France of Hoquiam and Lowe of Grand Rapids. That timber was twenty miles from salt water.

Upon cross examination Mr. Polson testified:

That he had never been upon the lands of the plaintiffs in this case to make any minute cruise. He had no knowledge of the respective elevations between the lands of the plaintiffs and the Straits, except the cruiser's reports by Lou Duvall and other parties that had made cruises years ago. The witness is acquainted with the Merrill and Ring Company that owns those lands upon the Straits, but is not a stockholder in that company. The Merrill and Ring Company are stockholders in the Polson Logging Company, owning one-half of the stock, of which the witness Polson owns one-quarter. Witness has never heard of any timber being logged or sawed anywhere in the interior of Clallam county south of the Mountain range that has been referred to that separates the lands upon the straits from the lands in the interior. Witness's attention being called to the railways, witness says that all railways and logging roads leading north from Grays Harbor terminate at Moclips. The Northern Pacific Railway terminates at Moclips. The witness' own logging road also leads North of Grays Harbor and Coats-Fortney extends thirty miles from salt water.

The Coats-Fortney about ten miles. The Northerly terminus of his road is about twelve miles north of the north line of Chehalis county. There is not very much of a fire hazard to the timber in the interior of Clallam County. Does not know anything about the existence or not of burnt lands in the interior. In logging the timber lands upon the straits, taking the Goodyear lands for instance, in case of damage to such timber lands by a fire, witness would log this to Port Angeles, and not to the straits. He would mill it on the ground or take it to Port Angeles, and witness does not know of any way by which he could take out the timber lands in the interior in the event of damage by fire, except by first building a railroad into it. There are no driving streams that run from the interior to the straits. The streams in the valleys of the Sol Duc and the Callaway, where the plaintiffs' lands lie, do not run to the straits, but they run in a Southwesterly direction to the Pacific Ocean. The only way to bring this timber out from the interior is by rail to Port Angeles. The witness can't say how many miles such a railroad would have to run from Port Angeles into the center of the Lacey holdings and the Sol Duc valley.

Q. I did not ask you that, Mr. Polson; but without being exact, approximately how many miles, whether it would be thirty, or forty, or fifty?

A. That all depend on the grade you would want to make in your survey. That is altogether according to the judgment of the man moving the timber. One man will use a shorter and steeper grade, and another will use more mileage and easier grade.

Q. If you went in there upon a direct line, would a direct line from Port Angeles to the Lacey holdings in the interior be any less than forty miles, say, in length?

A. That would absolutely depend on the survey.

Q. I am not speaking of a survey; but if you simply laid the railway down on the map and measured the distance with a straight line from Port Angeles

into the interior of Clallam county, where the Lacey holdings lie, would the distance be forty miles?

A. The Lacey holdings run a good many miles; it depends what point on those lands you want to measure to.

Q. Well, say that the Lacey holdings commence, as I understand it, about a half or three quarters of a mile west of Lake Crescent; do you know how far that is from Port Angeles?

A. If you will tell me the townships they pass through, it is easy enough.

Q. Do you know anything respecting the difficulties of railroad construction from Angeles into the interior of Clallam county where these Lacey holdings lie?

A. No more than what I have talked with the Milwaukee people. They said they can construct a railroad at nominal cost.

Q. They said they could construct a road at nominal cost?

A. Yes, sir.

Q. That is, extending from Port Angeles where to, to Lake Crescent and around the Lake?

A. Yes, sir, around the coast, to Grays Harbor.

Q. But whether it is true that such a railroad can be constructed at a nominal cost, or not, you do not know?

A. No more than their information they gave me.

Q. You do know, however, that no such railroad has been constructed up to the present time, do you not?

A. I know that there is no road constructed; that is any amount of it, to say: the Milwaukee, I understand, started one.

Q. In speaking of the Milwaukee road, you know, do you not, that the Milwaukee road, or a subsidiary of it, have already constructed a railroad from Port Angeles some miles west?

A. They told me that they started construction of it.

Q. From Port Angeles in a westerly direction to the Earles' holdings?

A. Yes, sir.

Q. Can you tell, even approximately, from such information as you have how much the cost of that railroad was per mile?

A. I never asked them.

Q. Have you any knowledge upon the subject?

A. I have not.

Q. In giving your testimony of the value of this timber in the interior, did you take into consideration the necessity of constructing a railroad into the interior of Clallam county?

A. I did.

Q. What sort of a railroad did you make your opinions upon, what length of road?

A. Public road or a private road?

Q. A public road or a private road, either one.

MR. FROST: By that you mean a common carrier, do you not, or a private?

A. Yes, sir.

Q. (Mr. Keeney.) What was the length of the road you took into consideration in making your calculation?

A. A road from Port Angeles to get that timber, to haul that timber and all the other timber in there.

Q. You made your estimate then upon a railroad running from Port Angeles into the interior of Clallam county?

A. Yes, sir.

Q. And what was the estimated cost of construction of that road?

A. From fifteen to twenty thousand dollars a mile.

Q. How many miles did you put down in your calculations?

A. I did not put them down.

Q. You made an estimate of the cost per mile, but you did not complete your calculations by making any computation of the length of the railroad, is that what you wish to be understood as saying?

A. No, I was taking the quality of the timber and the ground, and what you would pay for the timber and the way we would build our road. I could just as easily take that timber out as our own and pay \$2.00 a thousand.

Q. But you would have to build a railroad first to reach it?

A. Yes, sir.

Q. Did you figure in your calculation upon a railroad twenty miles in length, or fifty miles in length?

A. Oh, indefinite.

Q. Or, did you figure upon a road that would run from Port Angeles into the interior of Clallam county, and thence on to Grays Harbor?

A. Yes, sir, that is where I would terminate eventually.

Q. Is that what you took into consideration in making your figures?

A. No, sir; I took into consideration reaching this body of timber.

Q. And taking it out to Angeles or to Grays Harbor?

A. Port Angeles, the shorter haul.

Q. Did you make any estimate in detail as to the cost of this road, that is, any computation in which you would put down the cost of the grade, and cost of the steel, of the ties and the other things that go to make up a railroad?

A. No, sir; those have to be gone into. You can't do that without making a survey of the road minutely; you can approximate it, but not minutely.

Q. So you undertake only to approximate it?

A. Yes, sir. The road may be built for twelve thousand dollars; it may cost twenty. It is approximately that.

Q. In going over those cruises in the books you found, did you not, that a large portion of the timber of the Clallam Lumber Company was in that rather mountainous country along the Callawa River with elevations of two thousand to twenty-five hundred

feet, and in some cases three thousand feet, did you not?

A. Some portions of it are quite high.

Q. Had you planned any route for reaching that timber and taking it out to the market, or make any calculation upon the length of such a line?

A. By what?

Q. Did you make any calculation respecting the length or the cost of a railroad to reach that timber along the Callawa?

A. Some is more expensive to move than others. Others is more cheaply moved. It will all average up to a certain figure.

Q. Did you make any calculation respecting the length of the railroad that would be necessary after you got to the interior of the county in order to reach the various holdings of the Lacey Company, stretching along the Sol Duc and Callawa Rivers?

A. Not minutely, no, not every section. It was not necessary.

Q. Mr. Polson, what are the present prices of logs in the markets of Puget Sound?

A. On hemlock is from 6 to 7; spruce from 6 to 12; fir 6, 8 and 11. (This means so many dollars per thousand feet.) The price for logs, on March 1, 1912, was about \$1.00 higher on all grades than March, 1914. The market on Gray's Harbor was about the same as the market on Puget Sound. The production of logs on Puget Sound since March, 1912, has remained about the same. There has been no scarcity of logs nor tendency toward over-production. There is not a ready sale at good prices for all the lumber than can be manufactured in the mills in Washington and Oregon and has not been for several years. This condition has had a tendency to lower the price of logs and has existed since 1907.

Q. I ask you whether in view of this condition that you have described you are able to perceive any particular necessity for opening up large, new areas of timber in order to supply the market at this time?

A. Well, that depends on the judgment of the men going into the business.

Q. Well, I am calling for your judgment, Mr. Polson, as an expert, you being an expert in this logging and lumbering business; do you perceive any need, or do you perceive a commercial desirability here in Washington of opening up at the present time large new areas of timber to the market?

A. Taking it from my viewpoint I would rather they would not open that up, and give me a better market for what I am doing.

Q. Is that the best answer that you can make to that question.

A. That is an honest one.

Q. Taking the existing logging operations in the State of Washington, in your judgment are those logging operations highly profitable at this time?

A. In all probability they are not highly profitable.

Q. I did not get that?

A. In all probability they are not all highly profitable.

Q. I am not asking you about your particular operations, but taking the condition of the business as a whole, is it highly profitable business at this time?

A. We could stand a good deal more.

Witness' judgment as to the value of interior timber was practically the same before he was shown the county cruise books as afterwards. Witness was not asked by the defendants to be a witness in the case until two or three weeks ago, but did not tell the defense at that time what his valuation of the lands was and they did not ask him.

Witness knows what the lands on the straits were assessed for because he knew it was assessed a good deal lower than his own lands. He discovered this because he goes before the State board of equalization every year and wished everybody assessed pretty nearly right so he would not have to pay all the taxes. The witness' lands, 20 miles back from the water, were assessed at \$1.00 a thousand feet stumpage. The hem-

lock from 25 cents to 40 cents, both in Chehalis county and in Grays Harbor county.

Q. Then you did have occasion to inform yourself as to what these lands on the Straits were assessed for?

A. All over the State.

Q. Did you at the same time have occasion to find out what the lands in the interior were assessed for?

A. Interior where?

Q. The interior lands of Lacey & Company you have been testifying about?

A. Yes, sir.

Q. Did you acquaint yourself with that?

A. Yes, sir.

Q. That was how long ago, in 1910, 1912, or 1914?

A. I have been following that up for ten years.

Q. And at that time did you inquire into the actual value of the lands in the interior?

A. I formed my own personal opinion.

At the same time the witness acquainted himself with the assessment of the interior lands in Clallam county, and at that time he formed his own opinion as to the value of these lands.

Q. Did you go down to see the lands in the interior at that time?

A. No more than I go to see my own lands.

Q. Did you go down to see those lands?

A. No more than I do my own lands.

Q. Did you ever see those lands?

A. I have been through them.

Q. In what manner did you go through them?

A. Walked through them.

Q. For what purpose?

A. To see the country and to see the timber.

Q. How long were you in there making that expedition?

A. I was in that country over twenty years ago.

Q. And you have been there since?

A. No.

Q. Based upon that estimate you were discussing the relative assessed values before the Board of Equalization?

A. I have had cruisers' reports on all of that country, and its timber for the last ten years.

Q. You had other cruises?

A. My own cruisers' reports on the character of the country; not that land, but the entire forest reserve of the Olympic Mountains.

Q. What, if any, difference did you make in your valuation of the lands on the Pysht and the lands on the Hoko on the Straits, the lands about the Hoko, and the lands about the Pysht, that is, the timber, I should say?

A. On what stream?

Q. The lands in what we have referred to in zone No. 1, now, in what difference in your estimation of the value, if any, did you make between the lands here on the Pysht, along that river, or the lands up here along the Hoko River?

MR. FROST: We do not see the materiality of this question. We desire to object. There is no comparison between the timber in the same zone; that is in the same zone.

THE COURT: It is cross examination to show what, if any, familiarity the witness has with the timber. The objection is overruled.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

Q. These lands tributary to the Pysht, in the neighborhood of it, and those are lands along the Hoko? (Showing.)

A. In what respect, as to quality and accessibility in getting it out?

Q. State quality and grade and value?

A. There is not a great deal of difference.

Q. Is there any difference?

A. There is a little, not much.

Q. How much?

A. I don't think there is any.

Q. No difference in value?

A. Approximately.

Q. No difference in grade?

A. On an average.

Q. No difference in quality?

A. No.

Q. How about age?

A. It is all old enough.

Q. Did you make any difference as to your estimate in the valuation between the timber of Michael Earles' property here, and the Merrill & Ring property over on the Pysht?

A. The Merrill & Ring timber is older timber.

Q. Which is?

A. The Merrill & Ring timber.

Q. Which is in your judgment the lower value as to the market value in 1914 and 1912?

A. That depends on what you want it for.

Q. To get money out of it and put it on the market?

A. To get money out of it you very often have to drop your old growth timber and go into the section of merchantable timber and get good money out of that; the filling of an order and things move, you drop back to the old growth timber and get more money out of it, and that depends on what the market calls for.

Q. That is what I want to get at; what was the market value of this tract as a whole, of the Michael Earles' timber compared with the timber market as a whole of Merrill & Ring on March 1, 1912, and March 1, 1914?

A. I could not tell you without going to the books and see what the orders called for at that time.

Q. You know, do you not that the Milwaukee Railroad now terminates in the Michael Earles' holdings, which I point out?

A. I do not know absolutely. I have not asked them where their railroad terminated lately.

Q. Assuming that it does, would you attach any more value to those lands of Michael Earles than to the lands of the plaintiffs here in the interior?

A. No, I don't know as I would.

Q. You would just as lief have the lands of the plaintiffs in the interior, located back of the mountain range without any railroad as the lands of Michael Earles that has a market right here on the road?

A. If I wanted to move that timber in the Milwaukee would soon build a railroad.

William J. Chisholm, witness on behalf of defendants, testified:

Has been a logger for 45 years, in Michigan, Minnesota and Washington; eight years in the State of Washington. Is general manager of the Merrill and Ring Logging Company. Is familiar with the methods and manner of logging in the Northwest and the cost of logging. As general manager has had charge of the construction of logging railroads. Has built 400 or 500 miles while in the logging business. Is acquainted with the market price of logs in the Puget Sound markets and with the value of standing timber. Witness has been over certain portions of the timber lands lying along the Straits in Clallam county comprising the holdings of the Goodyear, Merrill and Ring, and Milwaukee Land Company, and Puget Sound Mills and Timber Company. Has been across the plaintiffs' timber, along the Sol Duc River, from Lake Crescent to Mora and from Bear River to Clallam along the road. He is acquainted with the topography of the country. Is familiar with the conditions attending upon the logging operations in the Straits and in the interior.

As to the difference in cost of placing in the water the timber in the Straits zone as compared with the timber in the interior zone, the witness says. This depends on the quantity of timber to go out over certain roads. If a man owned 40 acres in the interior and 40 on the shore, the forty on the shore would log the cheapest. But a big holding, it would cost no more to log a big holding, taking the plaintiffs' holdings for instance, against the other holdings. The amount of timber is what makes the difference in the cost.

Witness says that the Lacey holdings in the interior belonging to the plaintiffs would log into the waters of the straits as cheaply as the timber in zone 1, owing to the fact of it being in big holdings and the country being level in the interior zone. Witness has examined the county cruises of this timber. Just looked them over. Thinks the timber in the interior, by reason of its large holdings, would be worth about \$1.50 a thousand, the same as the timber in the straits, in March, 1912; and March, 1914, about the same.

On cross examination.

The witness has been with the Merrill and Ring people for 35 years. Is now on the Pysht river in charge of the logging operations of Merrill and Ring at that point. Spent three days about seven years ago going through this timber on the straits. Merrill and Ring then had and now have a tract of about 25,000 or 30,000 acres. Was down there a year ago for three or four days. Examined the mouth of the Pysht river but did not go through the timber. Again was there in August of last year, 1914, going through the timber with the idea of opening up timber operations. Have been there three or four times this year about three days on each occasion. Witness is interested with the Merrill and Ring people in their property in Snohomish county. Witness has never been connected with any logging operation in Clallam county, nor examined the returns of any logging operations there. The Merrill and Ring own the mouth of the Pysht river on both sides. Witness visited the Goodyear logging operations at Clallam Bay. Witness was in that country in June or July last driving through with Merrill and Ring in an automobile to examine the operations at Pysht river. They were not investigating the timber at that time. Witness did not know of any existing law suit at that time, nor was his attention called to the plaintiffs' lands, but he looked at the timber just as any man would who follows the woods. Whenever such a man goes through timber he always observes it. Witness did not know then that he was to be a witness in this case, and made no memoranda

at the time. Made an examination of the county cruises within the last two or three days since he found he was to be a witness. Could not tell how many acres of plaintiffs' lands he examined by this cruise. Does not remember the facts or anything of that kind. Just took the county cruises and compared it with some of Merrill and Ring's cruises and the total holdings of each party. Has no statement of it. Did not put it down on paper. Saw some of the Lacey timber, some of Merrill and Ring's and some of the Goodyear timber. Made no record of that of anything of that kind. Barely looked it over, just compared it in his mind. Just took odd forties in different places and glanced through it. Looked at the totals and footed up the totals of all the Lacey timber and the Merrill and Ring timber. Says he did not know at that time that he was to be a witness.

Q. Who suggested your looking at the cruises?

A. I don't know as anyone did.

Q. How did you know where to find it?

A. I say, "People, where are you going," and they says, "Going up to look at the Clallam County records, up in the jury room," up here.

Q. Up where?

A. They were up stairs at that time, on the next floor.

Q. Who suggested your going up?

A. I don't know as anyone suggested it.

Q. Didn't you know at that time that you went up to look over those that you were going to be a witness?

A. No, sir, I did not know that I was going to be put on the stand for a certainty until yesterday.

Q. I asked you whether you knew you were going to be a witness—

A. No, I did not when I went up.

Q. You went up more out of curiosity to look at the books?

A. It is always a curiosity for a logger or a timber man to look at those things.

Q. What other timber did you examine at that time from the assessor's books, from the cruises?

A. I looked over some of the Goodyear's and Merrill & Rings and Lacey's, just odd forties here and there.

Q. And no other timber whatever?

A. No.

Witness thinks that if a forty acre tract from the interior was located on the straits that it would be more valuable in this position because he says one could not afford to build a road into the timber for forty acres in the interior, but if it was on the straits it could be logged as it lay with a donkey engine and one would not have to build a railroad. Merrill and Ring are now contemplating logging their lands on the straits. If the condition warrants they may put in some 75,000,000 to 100,000,000 feet a year. Thinks that Michael Earles' mill cuts that much or more.

Q. Did you figure what it would cost to put a railroad down into the Lacey Company's holdings?

A. I figured out in my own mind.

Q. I asked you if you did figure it?

A. Yes sir.

Q. Have you a memorandum?

A. I did not make no memorandum.

Q. You did not make any memorandum?

A. No sir, I do not make them.

Q. When did you figure it?

A. Just lately.

Q. What day?

A. Probably yesterday.

Q. Probably yesterday; was it yesterday?

A. Say, yesterday.

Q. I am asking you to state when it was?

A. Yesterday.

Q. It was yesterday?

A. Yes, sir.

Q. After you heard Mr. Thomson's testimony?

A. Yes.

Q. You were in here, weren't you?

A. Yes.

Q. And you heard Mr. Thomson's testimony?

A. I had my figures made before Mr. Thomson testified, though.

Q. You made them yesterday?

A. Yes sir.

Q. Have you got them yet?

A. I have got them in my head.

Q. What did you figure was the cost of that per mile?

A. Well, I figured—I will tell you my way—I figured it would cost about four thousand dollars a mile to grade; that is, about eighty dollars a station, good and bad. I figured the rail, you buy a rail now from a good relayers for \$29.00 a thousand. I figured about ninety-eight hundred ton to the mill.

Q. How much did you figure for the rail per mile?

A. Twenty-nine times twenty-nine hundred dollars, one hundred tons to the mile. I figured it over roughly.

Q. How much did you figure?

A. I say, \$2900 for the rail.

Q. Was that laid?

A. No.

Q. Were you going to lay it?

A. I expect you would, if you were going to run a railroad.

Q. Will you proceed to tell us how much it would cost?

A. If you give me a chance, I will, and let me tell it in my own way?

Q. In your own way.

A. I figured the ties would cost, if you had to buy all of the ties it would cost a little more, but in a general thing in going through a country like that you would make a good many ties. We are having ties put on our road at 14c a piece, put on the cars.

Q. What kind of ties did you figure?

A. Some sawed ties, and some hewed ties.

Q. What price per mile?

A. 35c per tie.

Q. How much did that figure per mile?

A. 2500 ties a mile.

Q. Can't you figure it for me?

A. I can take a pencil and figure it out.

THE COURT: Something over eight hundred dollars.

Q. \$875.00?

A. \$875.00, that is my figure for it.

Q. What is your next item?

A. That is the rail, ties, and the grade. There is your spiking, and fishplates, and couplings, would probably cost another thousand dollars, and laying would probably cost, oh, I don't know, five dollars a station; that would be around one hundred and fifty, or one hundred and seventy-five dollars a mile to lay it.

Q. Would that complete your road, the items you have given?

A. No, you have some ballasting to do then. Of course, the conditions in handling your ballasting is handled different—it depends where your ballast is, and how much it would cost to get it on your right of way. There is no set price on that. It might cost one hundred dollars a mile, and it might cost five hundred dollars a mile. It is hard to tell.

Q. Put it at two hundred and fifty dollars a mile; would that be fair?

A. Yes sir.

Q. Is there anything else to add to this?

Q. No, sir; I think that would pretty well cover that.

A. I make that out as \$8200.00 a mile.

Q. Well, I put it \$8500.00 a mile. I did not figure this down fine.

MR. EWING: \$8900.00?

MR. PETERS: I will accept the amendment of counsel; say it is \$8900.00.

Q. Point out on the map and show where you would put the railroad in there to get the timber out to make it valuable.

A. Well, I think it could come up from Angeles to Lake Crescent and go in that way.

Q. How many miles?

A. Forty-two miles, maybe forty-five, and put it into the center of their holdings. That would be right into the center of the Lacey holdings; that is twelve miles in to the timber.

Q. Did you figure the grade of the road that you now suggest, to Port Angeles?

A. I haven't been over there and taken the topography of that country, but you can get a logging road almost any place you want to put it.

Q. And the elevation you have to surmount and the rivers you have to cross are immaterial?

A. No, that all goes in with a logging road.

Witness being asked to figure equipment necessary to log 150,000,000 feet a year, which he says would be the proper method of operating the interior timber, estimates \$50,000 for four locomotives; 60 miles of rail, \$180,000; 200 cars at \$500 a piece; ten donkey engines, with necessary cable, \$4500 apiece. Witness says that he figured that 15 cents a thousand upon the 3,250,000,000 feet of the Lacey holdings would build a road complete twelve miles into the timber. Witness says he does not know what the price of logs in 1912 was in Clallam county, nor 1914. Never sold any logs in Clallam county. Thinks the price of fir logs in the Washington market in 1912 was \$6.00, \$9.00, and \$12.00. In 1914 the same.

Q. What did you consider the value in March of 1912, of the Merrill & Ring lands and timber?

A. Oh, I do not know what they were.

Q. What?

A. I do not know the valuations in that country because I was not around there.

Q. Well, you undertake to place the valuation upon the timber lands of the plaintiffs in the interior, don't you?

A. No, sir; I thought the two values were about a dollar and a half, the whole belts in there; that is, taking the group.

Q. What belt?

A. Taking the group or zone, or whatever you

call it. I am calling it the Lacey holdings, or group, and the Merrill & Ring group.

Q. You undertook to put an estimate on the value of those lands at a dollar and a half a thousand?

A. I say, all a dollar and a half a thousand. I don't see any difference in the prices.

Q. Is that for spruce, fir and cedar alike?

A. That was for fir.

Q. What valuations did you put on the spruce and cedar?

A. Well, spruce is, the values in spruce have fluctuated a good deal since I have been in this country. I do not know—I have not sold much spruce. I have handled quite a bit of cedar.

Q. Did you take into view that this was wholly fir on those sections?

A. No; I knew there was a little spruce.

Q. What estimate did you make for the spruce and cedar in fixing your valuation?

A. Spruce and cedar ought to be worth more money. They bring more money than the fir does.

Q. How much did you allow for that?

A. Take it in that country, \$2.00, or \$2.25 for the cedar and spruce?

Q. What did you allow for hemlock?

A. Hemlock, that is pretty bad going down there. It is something you can't do very well down there. It ought to be milled there. I should not call hemlock of any particular value down there.

Q. What do you say was the value of the Merrill & Ring timber at the same period, of the fir?

A. I should judge about the same, a dollar and a half.

Q. And of the cedar and spruce?

A. The same.

Q. The same as what?

A. The same as the Lacey land back here.

Q. And the Michael Earles' tract, what would you say was the value of the fir at the same period?

A. About the same.

Q. And of the spruce and cedar?

A. I do not see any difference.

Q. Not a bit?

A. No, sir, very little, if any, except on the fact that the Michael Earles is, as you know, on the railroad, running out here to his plant, and is operating with a railroad, as you say, something like in the neighborhood of one hundred million a year, I should judge.

Q. And you did not estimate that his timber is worth any more than the Lacey people, in the interior, or the Merrill & Ring people out on the Pysht?

A. Well, if the Lacey people operate their timber it would not be worth any more for them to put a railroad in there. Earles have a railroad in there, or the Milwaukee has.

Q. Earles has a railroad in there, has he not?

A. So could the Lacey people have a railroad in there.

Q. You figured today that the fir on Michael Earles' property, or rather, in 1914 was worth just as much and no more than the fir on the Lacey people's property, than on Merrill & Ring's?

A. I do not believe Mike Earles is getting more than a dollar and a half stumpage out of it.

Q. I asked you what it is worth?

A. I could not tell you those figures. I am saying what I think. I do not know the exact value. There is no one knows the exact value of a stick of timber until it is cut.

RE-DIRECT EXAMINATION

BY MR. FROST:

Q. Take the timber known as the Goodyear, and Merril & Ring's timber, situated in zone No. 1, along the Straits, does it require a railroad and locomotives and cars and the other equipment detailed in your cross examination to log that?

A. Yes, sir.

Q. In other words to log one hundred and fifty million feet of timber, of that timebr, it would require as much equipment as it would to log the Lacey's, practically?

A. They might do with one locomotive less.

Q. But, if you were to operate that along the railroad described by Mr. Thomson in his examination, his testimony yesterday, which you heard, would it require any more equipment?

A. That was 16 miles of road he was talking about.

Q. Yes, sir.

A. I do not think it would. You might have to have a little heavier locomotive on your main line. The cost of hauling the logs after you get them to the main line is very small when you are logging up into the one hundred millions.

Q. In estimating these 60 miles of steel was there a considerable portion of that steel that would be used in building what is known as logging spurs?

MR. PETERS: This is your own witness and I will ask that you be not so leading.

MR. FROST: We are endeavoring to bring it out clearer.

MR. PETERS: But I want the witness to testify.

WITNESS: I did testify.

THE COURT: He is discussing the matter with the attorney and not with you, Mr. Witness.

Q. (Mr. Frost.) These rails, concerning which you have testified, as being used in logging spurs, would be used over and over again, would they not?

MR. PETERS: I object to that as leading.

A. Yes, sir, over and over again.

MR. FROST: That is not direct examination, it is only giving the witness an opportunity to clarify matters that were brought out in the cross examination of counsel.

THE COURT: The objection is sustained.

MR. FROST: Note an exception.

WITNESS: Your Honor, when I said 60 miles, —can I go on?

THE COURT: If you have any explanation to make. The question can be answered by yes or no, if you have any explanation, go ahead.

A. On cross examination, by saying it would take 60 miles of rail to operate that one hundred and fifty million feet can I explain it?

THE COURT: Yes.

WITNESS: I figure that eighteen or twenty miles of that would go into branch lines. It would be used over and over. As fast as a branch was cleaned up you would move it to another branch. You would have your grade in and you would take your steel and ties up and move them over to another branch. I did not suppose that they understood it would take sixty miles of rail on a main line, and never be moved, any of it.

Q. (Mr. Frost.) Is there any difference in the quality and value of hemlock in those respective zones?

A. I think there is. I think the hemlock, in fact, of the timber that stands close to the straits is more shaky, and liable to rot than the interior timber. The interior timber is sounder and less shaky. I think along the Straits, there, that the hemlock is practically worthless, until you get back a certain distance from where the high winds strike it. When you get back over in the valley, then you won't find near as much shaky timber as you will along the edge of the Straits.

Q. Will it be necessary to build a considerable amount of railroad to move the Merrill & Ring timber in zone No. 1 along the Straits?

A. Yes, it will. I should judge it will take in the neighborhood of three or four hundred miles of branch line to take that timber out, to log it economically.

Q. What do you refer to now?

A. I mean, log the whole timber; that is, branch lines, it would take a good many branches in thirty thousand acres. It may not take four hundred; probably three hundred miles.

Q. That includes spurs that are taken up and relaid?

A. Yes, sir.

Q. And you have done that a good many miles?

A. It takes a good many miles of railroad to grade and build.

THE COURT: Before we get away from that, I don't understand whether the witness means to say that it would take more railroad for the same amount of timber in the coast-Straits timber than in the interior timber when he tells about the bulky amount that doesn't mean anything, but when you separate it from the proportion of the timber that is being obtained——

Q. (Mr. Frost.) Explain to the court what you mean?

A. As a general thing in the rough country, the rougher the country, it will take a little more railroad, unless you increase your cost of yarding. You can build a railroad and make your yarding shorter, and it decreases the cost of the logging, and in a level country you overcome a good deal of that. You can reach further out. Sometimes you can build a railroad around the brow of a hill and you might want to go around until you get up to the top of the grade by keeping going around and around.

Q. (The Court.) Do you mean to say it would require more branch road for the same amount of timber on the Straits than it would in the interior?

A. Oh, no, sir, I don't think it would. I do not say it would. It would only require sixty miles of railroad to log that Lacey people's timber. I am talking about starting operations there on the coast.

Q. (Mr. Ewing.) Mr. Chisholm, does the mere fact that timber is located in the zone along the Straits contiguous to the water mean that you can log right down into the water; does it do away with the necessity of having railroads?

A. No, no, no. You have to take your logs to a certain point to make economical logging. You have to have a central place to dump your logs into the water.

Q. You testified to having built at least five hundred miles of logging railroads?

A. Yes, sir.

Q. What are the facts with reference to those

railroads having been successfully operated after you built them?

MR. PETERS: I object to that as improper.

MR. EWING: Yes, but you inferentially questioned his ability to build a railroad. Ask him if he made the same sort of a computation for that as he did for this.

MR. PETERS: I will submit it to the Court.

THE COURT: Objection sustained. Exception allowed. I think there has been enough qualifying of the witness.

H. B. Newbury, witness for the defendants, testified as follows:

Witness' occupation is logging, lumber, saw-milling, business, buying and selling timber. Has been engaged in this for 25 or 30 years in Oregon and Washington. Has had the actual supervision of logging and lumbering operations. Has supervised the construction and operation of logging railroads. Is familiar with the methods of logging in the Northwest and the cost of logging, and the market price of logs in the Puget Sound markets for a number of years last past. Is familiar with the value of standing timber in the State of Washington generally. Has been across a portion of the lands of the plaintiffs in Clallam county, and made a sufficient investigation to form an idea as to the conditions of conducting logging operations and the value of the timber. Witness is also familiar with some of the lands lying along the Straits and beyond Clallam Bay, and has examined some of the county cruises of Clallam county. Witness is then asked as to the value of the plaintiffs' timber lands in March, 1912. Witness is then cross examined by the plaintiff upon his competency and answers.

Witness went down to examine the lands of the plaintiff at the request of Mr. Frost, counsel for the defendants, in August last, accompanied by Mr. Frost, Mr. McGuire, Mr. Riddell and one or two county commissioners of Clallam county. They went down from Port Angeles in automobile. Got into the timber quite

a bit. Was in there about five days traveling around through it. "I was further around and on the Straits and on the Hoko River, around in there." Witness did not make any notes at the time except to take up an acre here and there. He was not there cruising. Made no memoranda except for his own benefit. In a little book. He has not the memoranda with him. Was in the timber along the Straits about a part of two days. At the time had no cruises with him or any reports of cruises. Was down there two or three times before this occasion, but made no investigation on those occasions of the plaintiffs' lands.

Direct examination of witness continued.

Q. (Mr. Frost.) In making your examination of this timber, did you use an aneroid barometer and take the elevations here and there?

A. Yes, sir.

Q. Did you carefully study the physical characteristics in the country in these respective zones?

A. Yes, sir.

Q. With a view of ascertaining the logging cost?

A. Yes, sir.

Q. Did you, or did you not, take elevations with an aneroid following up the Beaver Creek, passing Beaver Lake and down the Forks of the Pyslit, and on to Clallam Bay?

A. Yes, sir.

Q. You made very careful observations of those things, did you?

A. I took five days.

Q. Did you observe carefully the character and condition of the country, or the earth, with reference to the possibilities of railroad construction and the cost in going through there?

A. Yes, sir.

Q. Did you make investigations of the character and quality of the soil along the Sol Duc Valley, and upon which the timber of the plaintiffs stand?

A. Yes, sir.

Q. And you carefully examined into the grade

and quality and condition of the timber upon those lands?

MR. PETERS: I object to that as leading.

THE COURT: Objection sustained. Exception allowed.

Q. Just what investigation did you make down there?

A. We went out and traveled around through the timber and made an examination once in a while. I would take up an acre and count it and measure it and put a tape line on various trees and figure them out, just to look it over.

Q. To what extent did you make note of the quality of the timber in those respective zones?

A. In traveling through it we made an examination and passed our opinion on the different trees, and measured them and examined the timber.

Q. You did not make a note of the quality of the timber, and the grade of the timber?

A. Well, I did not set down no notes.

Witness would say that the value of plaintiffs' timber on March 1, 1912, was from \$1.75 to \$2.00 a thousand. The value of the Straits timber would be the same, and the value of both of these districts of timber would be the same in March, 1914, and in March, 1912. Witness eliminates from this the hemlock. The witness thinks hemlock of no value whatever, except that it would be used in logging operations. There is no difference in the quality of the hemlock in the two respective zones.

On cross examination the witness says:

He has never bought or sold any timber lands in Clallam county. On one occasion he went down to Clallam county to look at lands for a proposed purchase about six years ago. The land was at the mouth of the Hoko River. Witness has not purchased or sold any lands in any considerable quantity during the last five years. There had been no considerable sales of timber lands during that period. Witness read in the paper of a large sale of timber lands in Oregon. Does not think there has been much done in the last

four or five years. The tendency of the market for the past five years is downward from the operating standpoint. From the holding standpoint it has been at a standstill. Witness' logging operations in Washington have been along the Columbia river, but he built some roads up in King county. Witness examined the cruise books of Clallam county at the request of the defendant. During this examination he had a map showing the location of the plaintiffs' timber. They also had this map of the plaintiffs' lands with them in the woods.

Q. You said that you were down in the timber there for four or five days?

A. Yes, sir.

Q. How long were you in the plaintiffs' timber?

A. Principally most of the time. Of course, we spent some time, a little time, down at Clallam.

Q. I think you stated a moment ago that you were down at the Straits' timber two days, did you not?

A. No, parts of two days; two pieces of two days, not two whole days. Two pieces of two days, down around the Goodyear's timber. I was down in there looking over the idea, and how it looked, and there is where he is working now.

Q. When you got out to examine this timber, who determined where stops would be made and what timber should be examined, yourself, or the parties who were conducting the party?

A. No, sir, we stopped for section lines, and for section corners, so as to locate ourselves on that map; because I could not tell anything about any map, or where I was in the woods, unless I could find a Government corner; so I could read it and know where I was, and what township I was in.

Q. In saying that the interior lands have, in your opinion, the same value as the lands on the exterior, you took into consideration the fact that there is a longer haul?

A. Yes, sir.

Q. And a greater cost of operation?

A. I differ with you. I take it that there is not. That the greater cost of operating is out there on the Straits. After the plant is in there the only difference there is that you will operate cheaper on good lands, than you will on the rough country. Where you are building roads up through mountains and have quite steep grades, and high cliffs to take off, it costs more to actually put the logs on the railroad after the plant is in.

Q. When you went into the timber did you go into what is called the Callawa country?

A. Not all of it; some portions of it.

Q. Did you go up in the hills; did you go very far away from the traveled road?

A. We were in township 29, range 13, in township 30, range 13—no, 29, range 12, and township 30, range 12.

Q. Would you say those sections are in Callawa country?

A. Yes, sir, we went up one branch of the Sol Duc until we got up to the point where the water turns and runs the other direction, and goes down the other way.

Q. Would you give me those section numbers again, or township numbers?

A. We were in township 28, range 13, 28-14, 29-13, 29-12, and 30-12.

Q. You made an observation of all those townships, did you?

A. Some, yes sir. Don't think that I went all through each one of those five acres; we went through some parts of it.

Q. How extensive would be your examination in each township?

A. We would take up a few sections here and a few sections there, you know.

Upon referring to the map, plaintiffs' exhibit A, witness says he did not go into the Callawa country. They took the automobile road at Lake Crescent and followed it down to the Forks, to the Quillayute and back up to Clallam Bay.

Q. In saying that the value of this timber in the interior is as great as that on the Straits, did you take into consideration that this timber had to be hauled out a good many miles before it got to the Straits?

A. My experience is that after your plant is in that the transportation itself, does not cut much ice in the logging. That is not the expensive part of it; after the plant is built. It is the operating, the kind of ground that you have to operate on, and the expense is in the operation itself on the ground. After you get your logs loaded on the cars——

Q. Didn't you take into consideration the upkeep of your road and the necessity of keeping up your rolling stock and equipment and the cost of bringing out those logs?

A. I would over-balance that by the different localities you log in; that is not the expensive part of it, that is, that that is on the Straits is in a rough and broken country, and you have to have steep grades and high points to take your timber off, narrow canyons to build your roads in, and every time you fell a tree it will fill the canyon up, and you have to dispose of that, and it is expensive in a rough country, while in a nice smooth country you can build an inexpensive road and you can work right along and get more logs and do it for a whole lot less money.

Q. Did you visit the timber where logging operations were going on, through which a railroad is already built; did you go into that timber?

A. You mean the Mike Earles timber?

Q. Yes, sir.

A. No, sir, I did not go in there.

Q. You testified that the timber on the Straits is worth in the stump the same as this on the side; would you say that the timber in which the railroad has been built is worth no more than when the road was never built?

A. I do not know about that; I was never in it.

Q. Would you say if this railroad was built down to the Pysht River that still this timber in here is not worth any more than the timber in the interior?

A. I will say that the Lacey timber is worth just as much as the Goodyear timber.

Q. I am asking you to compare it with the timber on the Pysht river?

A. Yes, sir; just the same thing. It is all the same kind of timber.

Q. Would it make any difference if the railroad was built into it?

A. No, sir. I believe you can log the interior timber off for less money than you can in front; that is, the fir, cedar and spruce. I don't put any value on the hemlock at all. I don't think there is any.

Witness took some elevations in the Callawa country, going up the creek after he left the Sol Duc. The highest point he found there was 765 feet. Witness did not figure out how the timber could be brought out of the Callawa river country. Was not down that far. He is only giving his estimate on the timber that he actually saw. He did not see the Callawa timber. In making this estimate he had in view the outlet to which the timber could be taken down to the Pysht river or to Clallam Bay. The witness proposed to transport the logs to Pysht or to Clallam and tow the logs from there to the mills. Witness estimated the cost of building a road from Clallam Bay or from Pysht river to the plaintiffs' timber. Figured it out on paper, but did not make any memoranda. Did not figure on the route to Port Angeles. In figuring on bringing it out to Pysht river the witness did not take into consideration that both sides of the river were owned by one company.

The witness says that it would make no difference, in his opinion, as to the value of the interior lands that the water front at Pysht river and Clallam Bay was already owned by other parties so that the timber could not be taken out that way. Nor the fact that there was no point of access from the Straits. Witness could not say what proportion of the plaintiffs' lands were level or what proportion of them were rough, but had based his judgment on the assumption

that the lands of the interior were more level than those on the Straits.

Witness has no knowledge of any sales of timber in the interior country within the last five years. Witness does not know of any sale of any timber lands having taken place in Clallam county for more than \$1.00 a thousand. He only knows of one sale having occurred some four or five years ago in Clallam county; does not know of any since. Witness knows of nothing that has occurred within the last five years that would raise the value of the timber on interior lands in Clallam county.

On re-direct examination the witness says:

That railroads must be used in the logging of the Straits timber as well as the timber in the interior.

On re-cross examination, the witness says that when down in the timber he noticed old burns of timber, lots of them, in the interior, and in going out from the Sol Duc valley to Clallam he noticed a very extensive burn. That after reaching the summit and going towards the Straits he did not notice any burns on the Straits side of the summit to amount to anything.

On re-direct examination by the defendant the witness says that the elevation of the pass between Beaver Prairie and Callawa river was 765 feet; that the elevation of Beaver Prairie was 425 feet; so that the pass was elevated 345 feet above the level of the prairie. The witness was not as far down as the Callawa river. Where the water commences to run down that way, we were in 10 and 11, 14 and 15, at that point. The character of the timber and the nature of the land in zone No. 2, being lands of the plaintiff along the Sol Duc river, and between the Callawa and the Sol Duc, were the best the witness had ever seen; as good as anybody has. The logging conditions were fine. Witness did not think that persons driving in an automobile from Clallam to Forks and back up to the Sol Duc Hot Springs, could form an accurate opinion as to the quality and quantity and character of timber within these zones unless they went out into the timber

some. Thinks that the fire risks upon the timber lands of the interior was a little greater than on the Straits timber.

Charles McGuire, a witness for the defendants, being sworn, testified:

He is a timber cruiser, buyer and seller. Is in the employ of one of the Eastern timber buyers and has been for several years; and is familiar with the value of timber in Western Washington; and with logging operations and logging camps; and is interested in some. Has made examination and inspection upon the ground of some of the plaintiffs' timber lands, and has been over the timber of the Puget Mills & Timber Company, the Milwaukee holdings, the holdings of Merrill and Ring and the Goodyear holdings lying along the Straits in zone No. 1. What the witness saw of plaintiffs' timber along the Sol Duc valley is good timber of good quality and good ground to log. This is in zone No. 2. The timber lands in zone No. 3 were more rolling and rougher, but the usual methods would log it. The lands along the Straits are much more cut up with ravines and narrow canyons than back in the interior. In going through these timber lands in the interior and in the Straits zone, witness observed the character of the country and took aneroid readings of the elevations with a view to determining what it would cost to build a railroad. The land in zone No. 2 on the Sol Duc river and west of Forks would be agriculture land when it was logged off. Witness was in the court room when R. H. Thompson, an engineer, testified with reference to building a railroad from the interior to Pysht river or Clallam Bay. In the witness' judgment there would be but very little difference in the cost of placing the timber from the interior in water of the Straits as compared with the timber in the Straits Zone. The plaintiffs' timber in the interior, on March 1, 1912, was of the value of \$2.00 a thousand. The Straits timber, in zone 1, was of about the same value. The witness' opinion is based upon the county cruises and upon what

he saw when down in the timber. Witness was down in the neighborhood of the timber five days. Went from Lake Crescent on the county road in company with one of the commissioners. He had the cruises and had run a compass through that country. At different places they stopped and picked up the section lines and went out to the corners so as to be assured of the ground they were on and took a general look around as to the quantity and quality of timber that was standing. At one place they were probably six miles away from the wagon road. Witness was on sections ten, eleven, 14 and 15, of township 29. Also sections 23 and 24. The witness was of the opinion that a person riding in an automobile from Clallam to Forks and back up the road to the Sol Duc Hot Springs could form an accurate opinion as to the character, quality and quantity of timber within the zones or the logging conditions concerning them. The valuation of timber lands in 1914 would be about the same as in 1912, both as to the Straits and the interior, viz., \$2.00 per thousand feet. Witness is not connected with the Merrill and Ring or the Milwaukee Land Company, or the Puget Mills and Timber Company, or the Lacey Timber Company.

After the recess the witness now expresses the opinion that while one riding in an automobile through this timber could form an opinion it would not be as good an opinion as going into the timber away from the road in different places

On cross examination the witness admits that he did work for the T. M. Ring Logging Company at one time, which is a branch company of Merrill and Ring and also for the Continental Timber Company, which was another name for the Milwaukee Timber Company. Did cruising for them. Considerable cruising, in Clallam county, at Twin rivers and Pysht river, along the Straits. Did some cruising in the interior in 1912 and 1913, for the Menachi Woodenware Company of Wisconsin. This timber was near Lake Crescent. Witness looked over two quarter sections. Also a cruise was made on the Hoko river for Mr. Blacker

of Everett in 1912. This was 120 acres. Had cruised lands for the Continental Timber Company and the Milwaukee Railroad Company from two to three months. Straits timber. But has never been down in the interior timber except the six days' trip referred to during which practically all of the time was spent in the timber. Witness was conducting a logging operation in Idaho in the year 1893, 1894, 1895, logging yellow pine and white pine. And was engaged in the mill business for about fifteen years, getting out from 15,000 to 50,000 feet a day. Afterwards witness was with the Blue Mountain Lumber Company in Washington in Asotin county, and is logging in Jefferson county now near Port Ludlow.

Witness looks after the cutting of the timber. The timber has to be transported over railroad five and a half to six miles long. Witness went over the Clallam County Lands with the other witnesses who have testified for the defendants. Witness examined the County cruises before this visit, and also afterwards. He found the books in the court house at Port Angeles. He was with the assessor, Mr. Riddell, and Mr. Frost part of the time. The Lacey holdings were shown to witness on the map. He took different sections, seeing how the timber averaged, and took it from the cruises and the quality of the timber. Witness made no memorandum of this; made a compilation of the timber run on two sections, Sections 31 and 32, Township 30, Range 12, W. Some one called witness' attention to it and said it was the largest sections in the county. Witness looked over the cruises at the time, then went on the sections personally after he went down there. Witness did not pick out any of the smallest sections of the Lacey people; just picked them out as he leafed over the book; did not pay so much attention to the grade of the timber as he did to the quantity. Witness took a number of sections and added them together to find out what they averaged, and when he came back he found them on the county cruises substantially as he had averaged them.

Witness, at request of plaintiff's counsel, produces

a memorandum book in which he had made memoranda of this information, showing the run of Sections 31 and 32, Township 30, Range 12 W., Section 31, as 107,885,000 feet, and Section 32, 107,883,000 feet.

Q. When did you make this memoranda?

A. I have the date on the book, I think, on the 8th month, and the 14th day of 1915.

Q. On August 14 of this year?

A. Yes sir.

Q. Did you make any other memoranda in connection with this matter at that time?

A. Yes sir.

Q. Show me all the memoranda that you made in connection with your examination?

A. While we were finishing that township I went through those two sections. I saw both quarter posts on both sides of both sections. I counted up different acres, and half acres, trying to satisfy myself that that amount of timber that the cruise showed was on the ground.

Q. That is with respect to those sections 30 and 31?

A. Yes sir.

Q. I ask you, however, what other memoranda you made in connection with your investigation?

A. Township 29, range 13 West.

Q. What did you put down there?

A. On Section 32?

Q. What investigation did you make of that?

A. I was at the quarter post between 32 and 5, township 28, range 13.

Q. What was the occasion of picking out that particular section, or was that just by chance?

A. In going through the land coming close to the road, and I wanted to be sure what ground I was on and I was looking at the timber far—I went out to those corners for that reason.

Q. Did you make any other memorandum than what was contained in that little book which you have?

A. No sir, I did not.

Q. Will you show me all the memoranda that you made with respect to your investigations?

A. I gave the distance in this book.

Q. I mean, in the book; will you show me the pages containing it?

A. It is not paged. I gave the distances to the corners.

Q. Show me the writings. I want to see the writings themselves.

A. Here. (Handing witness book.)

Q. That is another page, and you showed me this one here.

A. You can read that.

Q. This is the first one you showed me?

A. Yes sir.

Q. This is the second one?

A. Yes sir.

Q. What else?

A. They are scattered along through the book, in different townships. Here is another. I made different notes.

Q. This book contains all this memoranda?

A. Yes sir.

Q. Is there any objection to my looking at this?

A. Nothing private.

Q. I think I can show you here in a minute—

A. I have got other timber in there.

Q. I would not know anything about it anyhow.

A. I can assist you in getting to it.

Q. If you will; just fold the papers where you have any private information not concerning this matter, and I will respect it. (Witness folding pages.)

Q. Between those pages that are folded down?

A. Yes sir, some of those is abbreviated. You may have trouble, and have to ask me to explain it.

Q. (Mr. Peters looking at memorandum book) This, that you have first referred to is a fair sample, is it not, of the memoranda that you have here, the page that you read, from Sections 31 and 32?

A. Yes sir, practically that kind of information.

Witness made no table of the run of any large

number of sections of the plaintiff's lands, and did not average or tabulate the quality or the grade of logs in that area of sections, but formed his opinion on the grades from what he saw. Witness would take an individual section here and there and put it down as Sections 9, 10, and 11, 2 and 3, followed by the words "Rough ground", "Timber rough".

Q. And put it down as you have here, sections 9, 10, 11, 2 and 3; now, you have, "rough ground", "timber rough," that is referring to sections 31 and 32, is it?

A. No sir.

Q. What does it mean?

A. That refers to the sections that you read about, sections 9, 10, 11, 2 and 3.

Q. What about those?

A. They are higher on the mountain and what we call rough, rolling ground; that is, for a short note, what I would call it, rough. The others are level ground.

Q. Where does it say that the others are level ground?

A. It does not say it. I was on that and saw for myself.

Q. Were you not on those which you put down as rough?

A. Only just going through on the road.

Q. You noted there that that was rough ground?

A. Yes sir.

Q. Those five sections were rough, and these two sections were level?

A. Yes sir, that is what I saw from the road. That is near Beaver Lake, and near the divide.

Q. On this next page, I see Section 32, 37,000,-000, is that it?

A. Yes sir.

Q. That is designated as rough?

A. That timber is not as good quality as the other.

Q. That timber you put down as rough, or is it the ground that is rough?

A. The timber.

Q. What do you mean when you say "the timber is rough"?

A. It limbs down closer to the ground and not as good quality, that is what we call "smooth timber". You see some marked, "extra good quality."

Q. These, then, were all the memoranda that you made?

A. Yes sir.

Q. Now, you haven't any such recollection from your examination of the cruise sheet of the County, that you could take any series of sections and tell now what the run of the timber was, and what the quality of the timber was and what the grade of the timber was, have you?

A. I can give you the amount, I think, on four sections together that I was on and looked at.

Q. The amounts. I haven't any controversy as to the amounts. You found that the amounts you cruised out there substantially agreed with the County, did you not, as to the amounts?

A. Yes sir.

Q. I am asking you about the quality and the grade?

A. Well, sections 31 and 32, I can give you I think, from a memorandum, the way I saw it it was graded on the cruises.

Q. That is the ones you have just referred to now, is it not?

A. Sections 31 and 32, the two largest sections.

Q. Those are the ones you just referred to?

A. Yes sir.

Q. Now, any others?

A. I do not think I could grade any others from the County cruises. I can give you my own opinion on the grade.

Q. You were down there, of course, to give the benefit of your investigations to the court in this case, were you not?

A. No sir; when I went down I was asked to

go down by Judge Frost and form my honest opinion regarding the value of the timber.

Q. You knew there was litigation on?

A. Well, I was told there was litigation on.

Q. You knew that before you went down?

A. Yes, sir.

Q. Did you make any memoranda with respect to the lands on the Straits, the timber lands?

A. Only in just comparing the cruises.

Q. Did you make any memoranda in that book with reference to those?

A. No sir, I have not.

Q. You have not?

A. No, sir.

Q. Where are those memoranda?

A. I did not make any memoranda, just an opinion in comparing the cruises, of the county cruises, looking over part of the Lacey holdings, and looking over a part of the Merrill & Ring holdings, and getting different grades to see how the timber averaged one tract with the other.

Q. Now, how large a tract did you take in order to find that out?

A. I think I took some ten or twelve sections of the Merrill & Ring holdings.

Q. Which ones did you take?

A. I did not make no note of it, and I cannot give you that exactly.

Q. Which ones did you compare those with of the Lacey holdings?

A. With what I saw of the Lacey holdings.

Q. With the whole Lacey holdings?

A. No, sir, with what sections I was on, that I saw.

Q. How many sections were you on?

A. Well, the road practically runs through it. I could not give you the number of sections. I don't know as I counted them up. I can tell from my book the amount of the corners I was through, that would show the sections I saw.

Q. Didn't you make any memoranda of the

amount of timber on the Merrill & Ring, or any of the Straits properties?

A. No memoranda, only just looked it over.

Q. How close an investigation did you give of the situation along the Straits?

A. I just made a comparison from the records.

Q. I am referring to your being personally on the ground?

A. Well, I have been on the Pysht River, through part of the Merrill & Ring timber. I have been through the Milwaukee timber, parts of it, and parts of Michael Earles' timber.

Q. What is the comparison between the Straits timber and the Merrill & Ring timber and the Good-year timber, and the Lacey Company timber, in the interior, respecting age?

A. Part of the Merrill & Ring timber is a little older.

Q. Does that make it better timber, or not?

A. No, sir, some of the timber in that tract in on the decline. I would prefer for myself timber in the interior as for quality.

Q. For what reason?

A. In all timber there is always more or less defect with ground rot, and wind shake, and dead tops.

Q. That is taken account of in the county cruises, isn't it, and allowed for?

A. Yes, sir. I want to say in the county cruises, I also took into consideration——

Q. Wasn't it taken into consideration in the county cruises?

A. I think the different counties has different rules. I think it should be. I could not say, because I did not do any cruising for the county.

Q. No, but you went over the books and looked at them?

A. Yes, sir.

Q. Did you assume that they had taken into account all the stump rot, and other features you referred to?

A. Yes, sir, I would suppose they made a deduction for that.

Q. Then the showing in the book here would exclude those, the criuses, wouldn't they?

A. They should.

Q. Yet, in your comparison you charged them up to property in the interior, as if they were not taken into consideration?

A. No, sir, I am not speaking from that. Probably you did not understand my answer. This timber being on the decline I would prefer the timber in the interior.

Q. Which part of the timber in the interior is on the decline?

A. Some of the timber on the Pysht River. The Goodyear timber is ripe and has been for years.

Q. Which would you consider is the better timber, the timber which ran, where we are speaking of, fir, 48% No. 1, 30% merchantable, and 22% No. 3, or that fir timber which ran 35% No. 1, 42% merchantable, and 23% No. 3; which would you consider the better class of timber?

A. On the log market today the first you read.

Q. What would that indicate as to the age of the timber; which would be the older timber, the first class I read, or the second class?

A. I think there would be a great deal of difference, in different localities of the ground. The second timber which you read may have been just as old as the other, and grade a different soil, and rougher timber.

Q. Do you think the first class would be the more valuable timber?

A. Yes sir.

Witness has never himself made any sales of timber lands in the interior of Clallam County, and does not know of any such sales being made; considers the hemlock which witness saw of very little value, in either the interior or the Straits timber. In this territory the aneroid showed an elevation of 765 feet along the Callawa River, and an elevation of 825 on the

divide between the Sol Duc Valley and Clallam Bay. The country about the Callawa is rough and broken. None of the Lacey timber is on what witness would call rugged ground, but as to whether or not it was on rough ground witness did not go over enough of it to pass an opinion on that. the witness says in forming my judgment I kept the tract in my opinion from the tract as a whole. Witness has been through the Mike Earles' tract, and would not estimate any difference in the valuation between this timber and the Merrill & Ring timber, in 1912, and they have not changed in value in the year 1914, and this timber is about the same as the Goodyear timber. Witness, in making this estimate has taken into consideration that the Mike Earles' timber is now being operated, and is upon a railroad. "He is paying the railroad freight there to get that timber out, and I do not consider it any more valuable than the timber in the interior, because there is enough in the interior to justify putting in a road to log it".

Q. I am comparing at the present time the Mike Earles' timber and the timber on the Pysht and the Merrill-Ring timber, and the Goodyear timber; you do not consider the Mike Earles' timber of any greater value by reason of having that railroad there because they have to pay the freight than you do the timber on the Pysht, and the timber of the Goodyear people?

A. No sir, I do not.

Q. Then you think that the Merrill & Ring timber and the timber of the Goodyear's has better facilities for logging cheaper?

A. They are much the same.

Q. Much the same what?

A. As the Mike Earles timber.

Q. Then you would say that the character and quality of the Goodyear timber, and the timber of Merrill & Ring, and the facilities for present operation were the same in your judgment as the character and quality and facilities for operation as the Mike Earles' property?

A. In regard to value. I do not think the rail-

road adds any valuation to Mike Earles' timber.

Q. And it is based upon that same consideration, isn't it, that you figure that the lands of the Lacey people in the interior are of greater value, or of equal value to that you stated, as the lands of Merrill-Ring and of the other land?

A. Yes, sir.

Q. The fact of being in the interior or without a railroad as in the exterior with a railroad cuts no figure in your judgment as to valuation?

A. Not in large holdings. As a general thing the logger puts in his own railroad.

Q. In your judgment the Lacey people, you have a memorandum there, have you not, showing that the Lacey people have some forty-one thousand acres?

A. Yes sir.

Q. In your judgment if they had eighty thousand acres it would be twice as valuable because of the size of the tract?

A. Yes, sir; I would add more value to the big tract of timber. The bigger the tract of timber I could get hold of I think there is more value.

MR. FROST: He is misleading the witness. You do not mean by that it would be worth twice as much—

MR. PETERS: Wait a minute, about misleading the witness. State what you understood me to say, and give your answer.

A. I understood you to say, if it would be more valuable by a larger tract.

Q. That is what I asked you.

MR. FROST: He said would it be twice as valuable.

WITNESS: I did not so understand.

MR. PETERS: Answer it.

WITNESS: Read it.

MR. PETERS: I want you to take time to answer the question, to answer the question as you understood if you have forty-one thousand acres of timber lands and those same holdings had eighty thousand

acres of timber lands, would you say the bigger holdings would be the more valuable?

A. Yes sir, the bigger holdings would be the more valuable.

Q. Why?

A. After the road was built it would reduce the cost of the road by hauling out that many more feet on the same railroad.

Q. What did you consider as to the estimate of the cost of the road?

A. I did not figure it and form an opinion.

Q. What would you form the opinion as to the cost of such a road?

A. In the neighborhood of eight or ten thousand dollars a mile,

Q. How many miles would you figure?

A. That depends on where it would go out at.

Q. Where did you figure so as to take into account the effect of that high value of the timber?

A. Clallam Bay.

Q. How many miles did you figure the road to be at ten thousand dollars a mile?

A. It takes about 12 miles of road to reach in the edge of the Lacey holdings from Clallam Bay.

Q. And you figure one hundred and twenty thousand dollars?

A. I said from eight to ten thousand dollars.

Q. Then from ninety-six thousand to one hundred and twenty thousand would be your estimate of the cost of the road?

A. Practically, yes.

Q. What did you figure the equipment?

A. I did not figure it. I said I formed an opinion.

Q. What did you form your opinion as to the equipment?

A. That would depend on what you were going to log and what the output would be per year, how many million you were going to put in.

Q. What was your estimate of the yearly logging?

A. My opinion, to make it profitable, in tracts of that size. to make it profitable, it would be from one hundred and fifty, to two hundred million a year.

Q. What would be necessary to carry on such logging operations?

A. It would take about four locomotives, and ten or eleven donkeys.

Q. Did you ever formulate in your own mind any sum of the cost of a railroad and the equipment to put in, to add to the cost of this timber in estimating its comparative value with the timber on the outside?

A. Yes sir, I did.

Q. Give it to us?

A. I think I form an opinion that 10c a thousand would build the road and pay for putting the road in there.

Q. On how much timber did you estimate?

THE COURT: What difference did you make between building the road and putting it in there?

A. I put it in and ready to log that distance, in the neighborhood of about three million feet of timber.

Q. You mean, to equip the road ready to haul logs by putting it in; you said building a road and putting it in. Did you mean by that putting in a road and laying the equipment?

A. Yes sir, additional cost would not be over 10c a thousand feet.

Q. Additional cost of what?

A. Of putting the road in and logging the timber.

Q. Then what is, in your judgment, the total cost of putting the road in and logging the timber?

A. I don't know as I understand your question.

MR. PETERS: Strike that question out.

Q. What did you intend the 10c a thousand to cover?

A. The cost of building the road, the railroad into the tract of timber.

Q. Building a railroad into the tract of timber?

A. Yes, sir.

Q. Now, what did you figure, if anything, in addition to 10c a thousand for equipment?

A. I would not take that into consideration of making a difference between the timber in front, that we have been speaking of, and the timber in the interior, because you would have to have equipment for logging either.

Q. I am not asking you to make a difference; I am asking you what you would pay for the equipment for taking that timber out?

A. Depending entirely on the output.

Q. And you figure one hundred to two hundred million a year, take it on that basis?

A. Do you want me to give the aggregate?

Q. Just the aggregate; I do not care about the details of it; what would you figure it?

A. Well, the four locomotives would cost about \$10,000.00 apiece; the donkey engines range in different prices, say about \$4,000.00 apiece equipped. I think relay steel runs from 29 to \$30.00 a ton; the cost of ties for the track would probably run for a logging road, that they could be made along the track for about 25 to 30c a tie; the fishplates and spikes would likely run about \$500.00 a mile.

Q. You were here when Mr. Chisholm testified on that same matter this morning, weren't you?

A. Yes sir.

Q. You heard his testimony?

A. Yes sir.

Q. And you are giving now everything you heard him testify?

A. No, sir; I know practically about what those things cost.

Q. You never made any memoranda of it anywhere?

A. No, sir.

Q. Did you ever buy a locomotive for logging?

A. Yes, sir.

Q. Suppose this timber in the interior situated as it is, was a tract of 160 acres, instead of 41,000 acres, what would you say would be its value per thou-

sand; that is of the same average grade and quality, and the same average stand per acre?

A. I would not consider it to have the same value.

Q. What would you say would be its value?

A. A small tract that way, it is hard to sell, except to a merchantable logger, and when they get to it they give you whatever they want to. It is pretty hard to value a tract in the interior.

Q. Would you say that to be worth very much more in proportion to the 41,000?

A. I think I said that the large tract of timber is worth more than the small tract, yes, sir.

Q. How much in proportion?

MR. FROST: The witness said he can't form an opinion.

MR. PETERS: If he can't, let him say so.

A. I would not care to set a value on the small tract.

Q. You would not do what?

A. I would not care to set a value on the small tract.

Q. What was your judgment as to the manner in which this timber in the interior was eventually to be taken out as the most economical method?

A. By railroad to Port Angeles.

Q. How long did you figure that road in length?

A. I do not know that I figured it close. I think all that country, all of that timber ought to go out by railroad."

Witness says that the price of fir logs in the Washington market in 1912, was six, nine, and twelve dollars; they ran from six, eight and eleven, to six, nine and twelve. They have not sold for more than that price since that date. Witness does not think that the logged market sagged from March, 1913, to March 1914, but has remained about the same. When down in this country witness observed two large burns, one west and north of Lake Crescent about fifteen miles long, and a burn in the Sol Duc valley. The area of this, so much as the plaintiff could see of it, was from 40 to 80 acres. There is also a burn after

crossing the divide and going into Clallam towards the Straits timber. There is a burn in and around Beaver Lake, in places. This is on the side of the Divide towards the Sol Duc river, witness thinks.

Witness states that the fire risk to the timber in the interior is not greater than to the timber along the Straits. The timber in the Sol Duc valley is on level ground, is practically free from underbrush, and would be hard to burn. Timber is more subject to fire risk that is on rough and hilly ground. Witness does not know anything about the fog belt, or rainfall on the Straits or in the interior land; thinks that the claim which is made that timber on the Straits in Clallam County is protected by the fog belt from fire applies equally to all of Clallam County; thinks the interior lands have plenty of rain fall for fire protection; does not think that the amount of rainfall would affect the value of the timber.

Q. Well, you were down there in this timber, and you went out in Clallam Bay, and spent the night over in there, did you not?

A. We were at Clallam Bay two nights.

Q. You did not spend the night in the timber?

A. No sir.

Q. So that the time that you were down there and the time investigating the timber you would deduct that from the time in coming in and going out?

A. That was most of the time after night going in. We had daylight to come out on, but we hardly ever left the timber until it was almost getting dark. I think one evening we went in before we had the lights turned on.

RE DIRECT EXAMINATION

Witness when asked how the timber of plaintiffs compared with other timber in Clallam County, says, "It is the best tract of timber" he has ever seen.

(Witness excused.)

C. I. WANNAMAKER, sworn as a witness on behalf of the defendants testified as follows:

DIRECT EXAMINATION

He lives at Port Townsend, in Jefferson County, is a merchant, interested in logging camp, is chairman of the Board of County Commissioners; at one time conducted logging operations on the Hoko River, and West Clallam. Logs were put into the salt water at the mouth of the Hoko, and West Clallam into the Clallam Bay; been engaged for about eight years in the logging business in the State of Washington, is familiar to a certain extent, with logging methods; has bought timber in Clallam County, has recently made an investigation of the plaintiffs lands on the interior of Clallam County and is familiar with the timber in the Straits zone, and is familiar with the physical characteristics of the country in the Straits zone and in the interior, to a certain extent. Witness has been across from Clallam Bay over to what is known as Burns Mountain, near Sol Duc and around Forks, and observed the physical characteristics of the country with reference to the possibility of railroad, and the character and condition of the soil, and considers that the relative cost of placing logs cut from the timber in the Straits zone into the Straits compared with the cost of timber cut from the interior zone and put into the Straits is practically the same. The value of the plaintiffs timber known as the Lacey holdings on the the first of March, 1912, was from \$1.75 to \$2.00 a thousand, and about the same March 1st, 1914. The timber in the Straits zone at the same periods was worth substantially the same. Witness has made some examination of the county cruises of Clallam County, and is familiar with them to some extent.

CROSS EXAMINATION

On Cross examination witness testifies the property that he was operating on Clallam Bay was near the Goodyear people. Witness operated at West Clallam and around East Clallam; owns some property there at the present time; he also operated on the Hoko River, on 80 acres belonging to Mr. Seymour of

Tacoma, and on the property of a Mr. Talbot, and on the property of a Mr. Johnson. Has been engaged in logging for eight years, three years of that time being at Clallam Bay. In that period he logged off five or six hundred acres, about 10,000,000 feet of logs. Witness had no railroad. The farthest back from the edge of the Bluff that witness went was about a mile and a half; that is, on the Hoko River, and on Clallam Bay, about three quarters of a mile, and in neither case did he have a railroad. He boomed his logs in Clallam Bay. Witness figures that it cost him four to six dollars a thousand to log those six hundred acres. Witness saw the timber of plaintiffs in the interior in the month of August last, went down with the other witnesses of the defendant, made substantially the same sort of an investigation, made no memoranda at the time, and made no tabulations of the run of any given number of sections of the interior tract, or of the Straits timber. Witness examined the county cruises recently with reference to the lands in controversy last month, just before going out on the investigation tour. No one indicated to him what particular sections to examine. He just looked over the cruise books, and would see what was shown on some one page with respect to the sections; looked them over to see how much timber there was in the different sections; did not look over the cruises of the Straits timber at that time; had looked these over in 1912 and 1913, on an entirely different occasion. At that time, he was looking up timber for purchasing himself. Did not examine the cruise Merrill & Ring timber in 1912 and 1913, but had been over that timber at that time. Did not examine the cruises of the Goodyear timber.

“Q. At this time you could not tell from your memory, take any group of sections, as to the amount of timber on these interior lands, or the grade or quality of the timber, or other details, shown on these sheets of the cruises,?”

A. I did not understand you.

Q. (Question read)

A. I was in there just to see the quality of the timber, what I noticed, the character of the land that it was on.

Q. And after leafing over and looking at the individual sections you then went down into the timber?

A. Yes sir.

Q. The purpose largely was to see whether their timber had been fairly cruised, or not, was it not?

A. That is the idea.

Q. That is why you had looked at these sheets before you went down?

A. Yes sir.

Q. Now, did you take along with you any memoranda of what any particular sections run?

A. I had no memoranda.

Q. Did you go back and look at the sheets after you returned?

A. No; I was not in Angeles afterwards.

Q. How could you tell then, how accurate the cruise was?

A. I remembered some of the cruises on the different sections.

Q. You were investigating the area of some 41,000 acres of land, were you not?

A. I do not know how much land there was in it.

Q. Didn't you have this map of the defendants that stands here with the lands colored in green, didn't you have that with you on the grounds?

A. Yes sir.

Q. And you were investigating that entire tract colored in green, were you not?

A. A good part of it; that is, drove through it, where the road goes through, and stopped on several occasions and went into the timber.

Q. And you did it all by comparison from what you carried in your head from an examination of those books before you went down, so far as any comparison was concerned?

A. So far as any comparison was concerned."

Witness put no value upon the hemlock either in

1912, or 1914. This is true of the lands both in the interior and those on the straits.

Q. Suppose that the lands of the plaintiffs here, in the interior, were taken out of where they are now lying, and put along side the lands on the Straits, here, what would you say as to the relative value of the timber in the two tracts?

A. They would be no more valuable on the Straits than they are where they are.

Q. Why not?

A. The character of the shoreland, getting that timber to the Harbor. There are only two or three harbors along that coast.

Q. Let's take that comparison, before we go into this phase of the case. What I would really ask you is, what would you say as to the comparative value between the Lacey tract and the Straits' timber, if they were supposed to be taken out of the interior and placed along the Straits timber in the same relative situation?

A. Practically the same value.

Q. And you regard the timber then as of the same character and quality?

A. Practically the same.

Q. How about the grade?

A. I would judge about the same grade.

Q. And you think that they are of the same market value situated down there today and taken in 1912 as they would be out upon the Straits?

A. I do.

Thinks the fire risks is about the same in each tract. The effect of a burn of a considerable area in the Straits timber, and a similar burn in the interior timber will be substantially the same, because you have to move the timber on the Straits to some place where the logs can be held, and the same is true of the interior, because a logging railroad would have to be built in each case. The difference in the cost of a road will be the question of its length. It will take a road, according to witness' estimate, to go down into the interior timber, 18 miles long, from the mouth of the

Pysht River, Witness would not consider this any advantage in favor of timber land lying right on the Pysht River as against the lands in the interior, or, very little difference.

“Q. You want us to understand that in your judgment the lands lying immediately around the Pysht River which are supposed to be logged into the Pysht River are just as valuable so far as accessibility is concerned and no more valuable than the lands in the interior that would have to be hauled by railroad 18 miles in length, yet to be built, that is your judgment, is it?”

A. Yes sir.

Q. Do you know of any timber that has ever been sold in the interior of Clallam County, for any such price as you put upon it, \$1.75 a thousand?

A. I don't know of any being sold.

Q. Do you know of any that has ever been sold in the interior of Clallam County for more than \$1.00 a thousand, fir, spruce or cedar?

A. I don't know of any sales being made there.

Q. Do I understand that you don't know of any sales ever being made at any price in the interior?

A. Not to my knowledge.

Q. Then your judgment of the values which you have given is not based upon your knowledge of any purchase or sale of any such timber in Clallam County?

A. It is not based on that, no.

RE-DIRECT EXAMINATION

BY MR. EWING:

Q. Can you identify the map to which reference has been made as the map which you had with you on that trip? Is that the same one?

A. The same one I think.

Q. Speaking of this timber lands, you purchased timber lands in Clallam County yourself, did you not?

A. Yes, sir.

Q. How did the timber on that land compare with the Lacey timber?

MR. PETERS: I object to that.

MR. EWING: Well, you can object to it, when we want to bring it out.

MR. PETERS: I was directing my remarks to the court.

THE COURT: As a rule that would be cross examination for Mr. Peters, as illustrating anything. It might be re-direct, but not for eliciting any particular sale.

MR. RIDDELL: That is the point, Your Honor, when they have forgotten something, to get it out, I think the courtesy ought to go both ways.

MR. PETERS: I made no such objection. You can take it up in any order that you want. In doing that, I would make it as the Court rules, coming from your own witness.

MR. EWING: It would not be proper., as the Court stated, unless Mr. Peters brought it out. He asked about the sale, and we will show you the sale.

THE COURT: The objection is sustained.

MR. EWING: Note an exception.

MR. EWING: We offer to prove by this witness that the timber that he purchased was not as good in the character and quality of the timber of the Laceys, that he purchased in 1912 and '13, that he paid \$2.00 a thousand for, so that he does know about the values from sales that he is actually familiar with.

THE COURT: The offer is denied.

MR. EWING: Note an exception.

THE COURT: Exception allowed.

Q. How does this timber contained in the Lacey tract, as you saw it, how does that body of timber compare with other bodies of timber that you have seen, and become familiar with in Clallam County?

MR. PETERS: I object to that as being too general. There would be no way in the world of our measuring the value of his timber. He is comparing it with other bodies he has seen and is familiar with.

MR. EWING: In Clallam County?

MR. PETERS: That would not do us any good. Your Honor might take two tracts of land as set out before the Court, and compare them with what he has

seen is too general. And to turn the witness loose would be a comparison that we could not meet.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

A. It is the best tract of timber that I ever saw. (Witness excused.)”

R. D. MERRILL, sworn as a witness on behalf of the defendants testified as follows:

DIRECT EXAMINATION

Witness resides in Seattle, is engaged in the logging, timber and lumber business.

Plaintiffs concede Mr. Merrill qualifications as an expert; witness is a member of the firm of Merrill & Ring, owners of an extensive body of timber in Clallam County. He is familiar with the land known as “Straits Zone”, or “Zone No. 1”, on the map, exhibit “A”, and also with that of the plaintiffs, also with the character of the land upon which the timber stands. Witness states that the following elements are taken into consideration in arriving at the market value of timber.

“A. There are a number of elements or factors, the cost of operating, the quality of the timber, the cost of operating, of course, depends on a number of conditions, which are, the lay of the ground, quantity of timber per acre, the character of timber, whether there is water for donkey engines, or things of that kind, and the character of the soil, and stand per acre. I do not know whether I mentioned that or not.

Q. What is the last?

A. The stand per acre; the amount of timber on the ground. If the ground is broken, of course, it would make a difference in the cost of falling and hauling. If the ground is level it is less broken and easier to get to railroads, and easier to build railroads, and get the logs to a railroad, and cheaper in every way, and less wear and tear on the machinery, and also the value of the timber, and you have to consider the fire risk. I made a note of a number of

conditions. I may have omitted some. I suppose I am allowed to refer to that? (Witness referring to his notes.) It also depends on the amount of timber in the tract. If it is a very small tract of timber, there is always a good big sum which has to be spent to open up a tract of timber. If that tract is small it costs more per thousand to open the tract. If it is large it costs much less. If I was examining a tract of timber and if any one presents a tract of timber for me to purchase I always inquire whether or not there is timber around it. I do not care who owns it; if there is more timber in that zone it is more attractive to me than if there is no timber there. The size of the timber has a bearing; medium sized timber is always easier to handle than large sized. If it is very large, if the stand is very large and uneven,—if you cut one tree which scales 2000 feet, and another 20,000, it is very hard on the machinery; You have to have machinery that is heavy enough to handle the heaviest timber, and that is really an awkward thing to use when you come to handling small stuff. If you have an even stand of timber the right size and not too large you can handle that with a Ledgerwood engine, which is more economical than logging with a donkey engine. Another thing is a continuous operation. If timber is located in a place where you can only operate five or seven months out of the year the cost is greatly increased. This is on account of the fixed cost and depreciation which would be just as great whether you operated or not. Taking very old growth timber as compared with thrifty young timber and there is a great difference in the cost of falling. The old growth timber is more brittle and more liable to break than the smaller timber. Take a small healthy tree and when it falls it will bring up in the air, and you take the heavy old growth tree and fall it and it crushes right through and breaks the log, or splits it. Take it on rough ground and in falling it is very difficult to buck the timber up; that is, to saw it into logs after it is fallen. If the end happens to be on a high place and there is a depression between

that and the butt of the tree, when you come to saw that tree, you have to block it up, or else the two ends will pinch together, making it almost impossible to saw. This all takes time and you have to use wedges to pry the tree apart, and keep it from falling down, and pinching the saw. It is also the fact, which we know from experience, that young growth timber will hold out the estimate made by the cruiser much better than the old growth. We have had experience with both kinds, and we can get an accurate count there with the way our cruises compare with the sawyers. We find that when we are in the younger growth timber the estimates always run better than they do in the old growth. In fact old growth timber usually falls short. The reason for this is there is usually a great defect in the old growth timber and it is impossible for the cruiser to tell from the looks of the tree on the outside whether or not that is sound; and the chances are, when the tree is very old that there is a great deal of ground rot, and the top is usually rotten and passes to nothing when it is fallen. Very few cruisers take an account of this, and they do not have an opportunity to check upon their estimates. But we are in business and have cruisers' estimates and know the result and tell in that way. Our own cruisers we have instructed as to that. I think that is about all I can think of right now in regard to the basis I use in valuing timber."

Witness says that the timber in Zone No. 1, the Straits timber is good timber. It is principally old growth. There is some young growth there, but the bulk is old growth. It stands upon rough ground, all of it. There is some on smooth ground, but generally, as a whole, it is on rough ground. It must be logged by a logging railroad. The railroad construction and operation for logging this timber is moderately difficult. Very little of it will go directly into the Straits. It usually has to go around a draw. It has to go to a harbor first, and there are no harbors on the coast, except Port Angeles. The logging branches, or spurs, to the main railroad are difficult to put in on

account of the roughness of the ground. The logging conditions of the Lacey holdings in Zone No. 2, embracing the Sol Duc Valley and the Callawa river are extremely favorable. The ground is practically level and there is a great deal of gravel in the soil, and tracks can almost be put upon the ground without any work at all. On the Strait Zone, most of the soil is clay, and there is very little gravel to make a good road bed, especially a wet country, where they have so much rain. It is necessary to haul gravel and ballast a railroad carefully. Where the gravel is not in place, that is quite an added cost to the construction of a railroad.

The character and quantity of timber standing in Zone No. 2 is good. The poorest timber is along the wagon road. The timber in Zone 2 is medium growth timber; it is not old growth timber, and it is not small sapling growth. Compared with the Straits timber, the later has a great deal more defects on an average. There is one part of the timber down there on the Callawa River that is old, but is not defective, down in Zone 4. Witness does not know this from personal inspection, but from the county cruises; while the county cruises state that the Straits timber is old, deteriorating, and top broken.

Comparing the fire risk between the Straits Zone, Zone No. 2 and Zone No. 4, witness says": "The fire risk is not as good as it is on the timber to the west, that flat level country. According to witness' experience, timber in a flat country very seldom burns, but timber on a side hill, if a fire gets started, the fire follows up as through a chimney; thinks the fire risk in the interior is better than on the Straits; thinks the interior country is wetter than the Straits, more rain.

Q. What in your judgment would be the comparative cost of cutting these trees and sawing them into logs and rolling them onto cars, getting them into salt water, the comparative cost, I should have said, of the timber in this zone, or in zone 2 and 4, the interior timber belonging to the plaintiffs in this case,

and the timber in zone No. 1, or the Straits zone?

A. Can I take the pointer?

Q. Yes sir.

A. This zone, the timber through here and giving that portion there and part of this is good, too—coming down through here there is good ground, most of it, and down through here can be logged as cheap as any timber I know of in the State of Washington; I think, cheaper than any timber on the Pacific Coast, logged to cars; that is, putting on the cars ready to haul to market.

MR. PETERS: Let's get into the record the zones to which he refers.

MR. FROST: Then that would be all the timber of these plaintiffs in zone No. 2?

MR. PETERS: I did not understand him to so state.

A. Is this zone 2?

MR. FROST: Yes sir. You would include all the timber of the plaintiffs in zone 2 in that category?

A. There is a little rough ground in here on the outskirts. In any tract of timber there is a little rough ground; but the preponderance, I think, 90% of that belt is level ground. That is my own experience for my examination of the County records.

Q. And that is the timber in zone No. 2?

A. Yes sir.

Q. Take zone No. 4, you say, how much of that is comparatively level?

A. That is nice ground in there.

Q. That would be the intersection between five and six?

A. Yes sir.

Q. And any other in this portion of the zone?

A. Here there is nice ground. (Pointing). That is rather rough in there, parts of it. We own a little timber in there, ourselves. This tract in here would not log as cheaply as that.

MR. PETERS: You were last pointing at zone No. 4?

A. Parts of zone No. 4.

Q. (Mr. Frost) The north portion of zone No. 4, you say, is all level ground?

A. Yes sir, practically level ground. It gets worse over in here, I think, some place; but the bulk of that timber is the finest logging showing I know of.

Q. And as compared with the cost of placing the timber in the Straits zone?

A. This can be logged and put on cars for much less than any timber in the Straits.

THE COURT: The last answer, does that apply to both the Sol Duc and Callawa valleys, or just the Sol Duc?

A. Take an average of the whole thing, and this can be logged cheaper than the Straits zone on cars.

Q. (Mr. Frost) Now, including the cost of railroad operation, or hauling, or the difficulties with the Straits zone, what would you say would be the cost of getting it in the water?

"A. The cost of a railroad I figure, from the Pysht or Clallam—I want to say here that neither Clallam Bay or the Pysht are the right places to handle those logs. I suppose the County, in assessing timber, assumes that the logger will handle his timber the best methods known at the time, the best methods available, if he has the convenience to do it the best way; if he has not, that is not the county's fault, but the fault of the fellow who foolishly puts his money into timber. They always put more money into timber than they should; and when they come to operate they have not money enough to operate with. That is our experience with ourselves, and everybody else. I figure that if you want—this suit seems to assume from the testimony that is brought out, or they are trying to bring out, that the Pysht is the only place to take those logs. Now, assuming that is true, which is not true, I figure that a railroad can be built from the mouth of the Pysht down to the center of the Lacey tract for less than two hundred thousand dollars. They have in their tract, according to the County estimates, some three billion feet, and two hundred thousand

dollars at a cost per thousand would be about, a little over 5c a thousand, the cost of that railroad. Take the Pysht tract, which they have referred to, considerably, we have about seven hundred million there, and the cost of building the main line there to open up the Pysht tract would probably be about seventy-five thousand dollars, and that would be about the same cost per thousand, about 6 or 7c a thousand; practically no difference, considering the two tracts. It would cost no more to build a railroad to open up one than the other. Now, as to the hauling of timber, of course, it would cost a little more to haul from the interior than it would from the exterior. It is a little bit longer haul, at a grade of $1\frac{1}{4}$ per cent, I believe, that has been established by engineers, against a road of 3% grade, against empty, cars. We are logging in Chehalis County, the Polson Logging Company, in which we are interested, logging timber there at the present time, hauling it about 25 miles, which is practically the distance to the center of the Lacey tract, and it opens up in nice shape 25 miles of main line, and we have kept an accurate account of our cost of hauling and every department of the business, and I have referred to this and made some figures on it, and I will also say, we are logging another tract of timber in Snohomish County where the haul is about 7 miles, practically the same as we will have to haul here, and in that country the ground is very level, in fact it is a good deal like this ground here, only the timber is not so heavy per acre.

Q. What ground?

A. The timber in Snohomish county does not stand as heavy per acre, and the timber in Chehalis County does not stand as heavy per acre.

Q. When you say this ground here, you mean the ground belonging to the plaintiffs in this case, do you not?

A. Yes, sir. We find that the Polson Logging Company which hauls logs 25 miles at a cost of 42.3 a thousand to haul their logs and put them in the water; that also includes the cost of yarding the logs

to the main line, which should not really go in that, because that is a part of the operating expenses. That is not a part of the hauling expenses.

Q. When you say the cost of yarding that to the main line, you mean the cost of switching?

A. Yes sir, the cost of switching.

Q. By that, you mean taking the cars out from your logging spurs to the main line?

A. Yes, sir. We figure that should not be charged into the transportation, but we have always done that, so I can't segregate that part; but I know that the cost of switching is practically as great, if not more, than the cost of hauling. The Merrill-Ring people are hauling 7 miles, and it costs them 37c per thousand; the same kind of work. The difference of five cents a thousand over that for the short haul.

Q. Does that include your railroad operations?

A. Yes sir.

Q. And that includes the cost of oil and fuel?

A. The fuel and maintenance of the road. I did not include depreciation; but depreciation on the main line of this tract here, would be much less than the depreciation on our tract, on account of the greater amount of timber. Any depreciation considered would be in favor of the interior timber. I can tell the difference in the cost of logging on rough ground and on level ground, in my experience in logging in two localities, which had the same conditions, one being level and the other rough——

Q. Explain that to the court.

A. We find that falling in rough ground costs 21c per thousand more than it does on level. The yarding on rough ground and loading on rough ground, compared with the level, is a difference of 26c a thousand in the cost of that part of the logging. The branch construction I find in rough ground costs 44c, and level ground costs about 25c a thousand, a difference of 19c. This comparison is based on two tracts which run about an equal stand of timber per acre; that is, that there is fifty thousand per acre on

one tract, and fifty thousand on another, just about an equal stand.

Q. (The court) What were your figures on level ground for branch construction?

A. A difference of 9c; 44c one, and 25c the other. Take it where the timber stand is much heavier per acre, there is another added saving, which is very great. I should say it might make a difference of 50c a thousand.

Q. What is that?

A. The difference in the stand. If one tract has twice as much timber on an acre as the other, the tract can be logged for 50c a thousand cheaper than the other. Taking a rough tract and fifty thousand per acre, and a rough tract and one hundred thousand per acre, there would be a difference of 50c a thousand at least in the bigger tract.

Q. In favor of the heavy stand of logs?

A. Yes sir.

Comparing the run on timber in these various tracts, the timber of the plaintiffs in Zone No. 2 runs about 88000 per acre, I remember this is 88000 because it struck me as being a wonderful stand of timber. Zones No. 3 and 4, run from sixty-six thousand to eighty-eight thousand per acre. Our own timber runs about fifty thousand per acre and the county estimate is 52,000. The Puget Mill and Timber Company runs thirty-nine thousand. The Milwaukee Land Company is the best tract of timber along the coast. The Goodyear timber on the Straits runs about the same as the other timber.

Q. What in your judgment is the comparative value of a stand of timber per thousand feet in this zone No. 1, and in zones No. 2 and No. 4?

A. Well, I think that the timber in the interior is worth fully as much or more than the timber on the Straits. Take it as a whole, I know it is worth more; that is, take all the tracts along the Straits as one tract, and all the Lacey tract in the interior. The Lacey have practically all the fir timber in here, ex-

cept the State lands, and some which the Milwaukee have. It is a more valuable tract of timber.

With respect to hemlock, the hemlock on all of these tracts, Straits and the interior, is equally poor; where the hemlock grows with fir it does not amount to much. A solid stand of hemlock timber grows thrifty, and is worth considerable money.

Counsel for the defendant reads to the witness Merrill the charges from the plaintiffs bill of complaint of discrimination and conspiracy on the part of the county officials, Now that last clause would bring you and your Company within its discrimination, would it not?

A. In cahoots with the County officers, do you mean?

Q. Yes sir.

A. I don't think they mean that.

Q. Do you know, or did you ever hear, or ever receive any knowledge from any source whatsoever of any such a conspiracy or discrimination as that alleged in that bill?

A. Of course not.

Q. Do you believe in your own mind that such a conspiracy and discrimination exist?

A. I do not.

Witness says that his company has always paid its taxes on timber lands ever since 1880, and paid without a protest, except one year, when he thinks the company protested because it thought the valuations were high. Witness would not swear that his company did not protest as to the taxes for 1912, 1913 and 1914 that he knew nothing about it. Neither the witness, nor any member of his company, nor anybody associated with him directly or indirectly had ever with his knowledge been a party to any conspiracy or discrimination with the assessing officers of Clallam County in the matter of taxation.

CROSS EXAMINATION.

Witness is a member of the firm of Merrill & Ring, owns a large tract of timber on both sides of the Pysht River, they own both sides of the river at

its mouth. They began buying their timber lands in 1880. They were the first purchasers in that locality, and have the pick of the county; that conditions however at that time were not the same as now. At that time they were logging with oxen. Railroad logging was not known in any part of the country. Witness' firm had bought a few pieces of timber land in Clallam County recently.

“Q. Judging from the purchases that you made what would you consider the market value of the timber in the interior?”

A. I think it is worth just as much as that on the coast. There is no difference in the value. In fact, I think the Lacey tract, and that timber along the Lacey tract is worth more than ours.

Q. I am asking you about special purchases in the interior?

A. That particular bunch of timber that we bought was a poor quality of timber, something that had been left out and a part of it we bought because it was in a pass which goes from the Lacey holdings to Lake Crescent, and I have always considered that that was the way the Lacey timber would come out, by way of Lake Crescent.

Q. To Port Angeles?

A. Yes, sir, go to Port Angeles in preference to going to any other port along the coast.

Q. Have you been familiar with sales of timber land in the interior for the last ten years?

A. No; I have known of some sales, I have heard of sales, but I do not know that I can give any definite figures as to sales in the interior.

Q. Have you ever known of sales in the interior at a price greater than a dollar a thousand for fir?

A. No, sir. And I have no information of any exterior greater than a dollar a thousand.

Q. Answer the question. Repeat the question please.

Q. (Question read)

A. No, sir.”

Witness had bought lands recently in the Pass

between the Lacey Holdings and Lake Crescent, because he thought it was a good piece to own. He thought the railroad would go through there sometime and it would be valuable on that account.

“Q. Didn’t you buy that because of its strategic location, because it controlled the situation?

A. I bought it because I thought a railroad would go through. I do not think I can hold up any one. If they want to go through there, whether I would buy or not,—it is not strategic. It is on the Sol Duc River and not strategic at all. That one particular piece I thought was a good buy, and it lay right there and was handy to the lake. The other pieces are not extra good timber and they are not located particularly well. We bought them all cheap.

Q. What did you pay for this per thousand?

A. About a dollar a thousand.

Q. Did you pay as much as a dollar a thousand for them?

A. Yes sir, that is for the old growth fir.

Q. What did you pay for the fir as it ran?

A. Some of it was piling timber.

Q. Taking the fir on each purchase as an entirety, would it run more than 50c a thousand?

A. On our timber?

Q. No, on this purchase in the interior?

A. We do not class piling timber the same as we do old growth timber. I figured when I bought it I was paying a dollar a thousand for the old growth fir.

Q. What did you pay for the fir as a whole?

A. I did not figure it that way.

Q. What did you pay for the other fir?

A. I figured that per lineal foot.

Q. You did not figure that per thousand?

A. No sir; we did not figure that way. If we did we would not buy it.”

Witness had been over a considerable portion of plaintiffs land before plaintiffs bought them. Was over them about a month ago, just to go through on the road, was over them before in 1900; then went over two or three sections, and went down to Forks and

stayed around for two or three days, inspected particularly sections 31 and 32; spent, on the whole, a couple of days there, went down to Forks, chased around a little, and came home. That is the witness' entire experience with those lands, except that he has examined the county cruises; but would say that the most of the timber that he owns he has not inspected any more carefully than he inspected that timber. He examined the county cruises a few days ago, since they were brought up here to Seattle.

“Q. How long did you spend inspecting them?

A. I gave a more thorough inspection—I gave more time in examining those estimates than in examining estimates of timber I was buying.

Q. How long would you say you were spending examining it?

A. Eight or ten hours I should say.

Q. Eight or ten hours on the forty-one thousand acres?

A. Yes.

Q. During an inspection did you make a tabulation of the result insofar as the grades and quality, and the stand are concerned?

A. I did not; but other people have; they looked over it.

Q. And so far as your own personal inspection goes?

A. It is not my custom to do that.

Q. It is not your custom?

A. It is not the custom of any timber men that I know of.”

Witness is acquainted with some of the burns in Clallam County timber lands; supposes he knows the largest burns; asked if the large burns are not all on the south side of the ridge running between the Straits and the interior, witness says, there is a large burn on both sides.

“Q. There is a large burn on both sides?

A. There are large burns in the interior.

A. I do not know. It is on a steep side hill, and the Lacey timber is not on that steep side hill. I said

that the fire risk was lowest on level ground, than it was on rough ground.

Q. Do you know of any burn on the Straits side of the summit that is as large as those in the Sol Duc Valley?

A. There is not much land there. There could not be as large a burn. I do not know as there is as much timber to burn there.

Q. How much of an examination have you made of the plaintiffs timber in the Clallawa Valley?

A. I have made none.

Q. You know, do you not, that that country in there in the Callawa is very broken?

A. I know it is not as good ground as the other; but I know from the County cruises it is not all logging ground. I have examined the elevations carefully on the County cruise.

Q. In fixing your idea of the comparative value of that timber, would you consider, and did you consider, the route by which it would be brought out?

A. Yes sir.

Q. How would you think the timber in the Callawa Valley can be brought out?

A. Bring it up the Sol Duc River; I will show you—that is, I take the word of the cruiser. The cruiser said that on section 11, in here, that there was a good pass from this timber up to the Sol Duc River, and I looked at the elevations and I saw the elevations of the pass; I think it was 673 feet, or something like that. It was lower than 700 feet; and the elevation of the Callawa River was about 400, and the elevation of the Sol Duc is about 300, and there was no difficulty at all in going across there. The county cruise said that there was a good pass to the southeast corner of Section 11 on the Sol Duc River.

Q. While you are there, will you give to the court—you said that you did not consider the route over to the Pysht as the better route for the Clallam Lumber Company; will you indicate the route by which you think it ought to be brought out?

A. Yes sir; It could go to Port Angeles. The

proper way to handle that timber is to saw it on the ground and have a mill on Lake Pleasant. It would be a fine place to hold the logs around the mill, and a great place for a saw mill, and plenty of pile ground. I do not know of a more ideal place for a saw mill than right there, and my way of handling that would be to have a large mill there, or several mills. I think two small mills would be better than one large one, and railroad the lumber to Port Angeles, or to the East.

Q. Were your valuations based on that?

A. No, sir; my valuations were not based on that.

Q. On what were they based?

A. My valuations were based on taking it to the Pysht River, as I said first; you wanted me to.

Q. What sort of value would you put on it if it were manufactured at Lake Pleasant?

A. It would be more. You get it clear to the lake, and you figure that out yourself.

Q. Your calculation was based on a terminal rate, was it?

A. No sir, it was not. It was based on taking the timber through to the Clallam River, or the Pysht.

Q. If a terminal rate was not guaranteed in the interior it would make a difference in your valuation?

A. No sir, as I told, I did not consider that terminal affected my valuation. My valuation was based on taking your logs to the Pysht or the Clallam.

Q. Taking the two bodies of timber, if you will consider the two bodies of timber, of being the same value, one remote from transportation, and the other close to transportation wouldn't the value of the remote timber be as much less than the timber that is close by as much as the additional haul would cost to get the remote timber to market?

A. All conditions being the same, that would be true.

Q. As between the close-in timber, and the remote timber there would be a difference in value equal to the difference in the cost of transportation?

A. All conditions being the same, that is true.

In my calculation, in my testimony I think I stated what I thought that difference would be, between the Pysht tract and the interior timber, and the same applies to the Goodyear holdings and the Milwaukee piece, and the Michael Earles timber. I will say this, that the conditions on the Goodyear tract are not as good as ours. In fact the conditions on our timber are better than any of the others in the exterior.

Witness estimate of two hundred thousand dollars as the cost of the railroad for transporting logs from the interior lands did not include railway equipment, or the branch lines. Witness states that the \$200,000.00 estimate by him would build the railway line to the center of plaintiffs' holdings; that the proper center in his opinion would be at Lake Pleasant. Witness figures the railway required would be twenty-two or twenty-three miles, but says it would not make much difference if it be made thirty miles; it would only increase the cost per thousand about a cent a thousand, the difference is so small you could not figure it per thousand. It would not be considered at all in figuring the cost of operation.

Witness' estimate of value of timber was based upon an operating basis.

With regard to protest referred to on direct examination, witness states that he was not sure whether his company made a protest or not—he would not testify as to that. Mr. Beal, or someone, told him that his company had protested, but the witness was not sure whether they had or not. Upon being asked if he had not protested because he considered that he was over-assessed, he replied that he had protested because the interior timber was assessed for less than the exterior timber. "I don't know as I put it in writing or made a formal writing of it, but I was there when the Board convened. Mr. Peters was there, and Mr. Beal was there, and I know I protested, and I would do so always until the two are on an equal basis, or ours is assessed for less." In the protest that the witness made because the lands on the interior were

assessed at a figure less than the witness's timber lands, he was joined by Mr. Earles.'

Q. You do not know the nature of the protest?

A. No sir, I do not; I could not swear.

Q. Do you know whether you got any relief from the protest or not?

A. We did not get any relief that I know of. I do not know that we protested; I could not testify to that. I believe Mr. Beal, or someone told me that we had; I am not sure whether we did or not.

Witness' company has not yet put any logs into the Pysht River. They have cleared a little land toward its operation.

Witness knows of Michael Earles' mill at Port Angeles, and that he is operating his timber. Mr. Earles's timber is not worth as much as witness'. It is not worth as much as the timber in the interior. Witness thinks the Earles mill was finished in Port Angeles about a year ago. He was there last Spring, when it was nearly ready to operate. It must have been along in the spring when they were down there. At that time the mill was substantially completed. He things that Mr. Earles said he was going to start the mill the next day.

FURTHER CROSS EXAMINATION

Q. Calling your attention to Zone 4, you will notice in my reference to this that these zones have been remarked, some of them have, and I am following in my questions the red figures that are here—referring to zone 4, and taking up in the northwest Corner of that as it appears on this exhibit No. 18, and going across that line to the green lands that appear immediately on the other side of zone No. 2, what difference did you observe in the character and quality of the timber on those lands, or the facility of logging?

A. I know when you get back here a ways, it gets rougher after you get up in the forest reserve, the land becomes rougher there, but the heavy stand of timber is on good ground. That is the result of my examination.

Q. In both of those tracts?

A. I looked in Sections 5 and 6 in that township, and it looked awfully good to me. It wasn't as heavy timber, I don't think, as these two up here. Sections 31 and 32 are the best sections I know of in the Pacific Northwest. In fact, I don't know of any better tract of timber in the Pacific Northwest, than this particular tract there."

These are the sections that have been testified to by the other witnesses. They are across the line in zone No. 2, and are situated similarly substantially, with the lands 5 and 6, and 7 and 8, in the northwest corner of zone No. 2. The lands in the northwest corner of zone No. 4 are not as heavy timbered as the lands just across the line in Zone No. 2. It is all nice level land there. I think on the other side of this creek it begins to get more rough. There is a little creek there that divides the lay of the ground. I am not positive but I remember looking over those sections, and they looked very good from the amount of the cruise.

Q. And they are about the same so far as facility of logging is concerned?

A. No sir. I do not know any land anywhere that will log as good as these other.

Q. I am not referring to sections 31 and 32, but to 5, 6 and 7, over here, and these just across this line?

A. I could not recall now. To look over that amount of timber, if I was looking over the land to buy it I would not look over it as I did the County Cruises, and I probably could not remember every section.

Q. I think you said you referred to those sections to which I am now pointing in the upper North-east corner of Zone 4, that this lay very satisfactorily for logging?

A. Good ground there.

Q. The ground was good and level?

A. Yes.

Q. They are not high up?

A. Well, you go up on the side where there is a county road.

"A. I have looked over the county cruises, but

my recollection—I may be mistaken, but three or four days ago in looking over sixty thousand acres of land, it is pretty hard to keep every section in mind—my recollection is that there is good ground there for logging, quite good ground in there.

Q. Where are you pointing?

A. I do not know the exact sections, but I know that the County cruise shows two or three sections in there where it says "Good logging ground."

Q. That is in section 4?

A. I did not see the section. I saw the cruises and they show some land in there which is very good.

Q. What would you say as to the facilities of logging this in sections 3, 4 and 9 and 10 of Township 29?

A. My recollection is that is good ground; practically all this ground down here is, except where you go out on the edge away from the valley. All that valley timber land there is fine.

Q. And what would you say as to the practical logging situation of the Ruddock and McCarty lands down below?

A. That is a great logging show, fine logging show. The county cruise, I think, shows about eighty-eight thousand per acre.

Q. That would be, as I judge from your testimony, a much better logging situation than the lands of—

A. I say the average of eighty-eight thousand per acre makes it very advantageous.

Q. And that would apply generally to the Ruddock and McCarty lands?

A. Yes, sir, I think, according to the county estimates they average more per acre. The stand averages more per acre than the rest. I was surprised at that, because I knew that those sections 31 and 32 were so high. I thought that would run more per acre, but up here it gets rough and there is not as much timber. It is older growth and nicer quality, but does not stand so heavy.

Q. I understand, there would be very little dif-

ference in the cost of running that railroad to touch the Ruddock and McCarty lands, from taking it down to this Pleasant Lake?

A. A very little difference in that respect, that is, per thousand. Very little difference in the cost.

Q. You stated some time ago, that as a cutting proposition you would use Pleasant Lake for a mill?

A. I said that was the most advantageous way of handling that interior timber, that tract of timber. Pleasant Lake is right in the heart of the belt.

Q. In figuring upon the railroad that you contemplated here you were going to terminate it, as I recollect it, at this timber?

A. A cent a thousand would carry it down considerable distance.

Q. Into the Ruddock and McCarty lands?

A. Yes, sir, that is gravelly soil there, and you can build a road for almost nothing.

The log market was higher in the spring of 1912, than of 1914. During that period from 1912 to 1914, there has been no great demand for logs. A great many camps had to shut down. It has been a poor period for logging. Witness being asked what influence this log market had upon the price of stumpage during the same period says:

"A. The timber does not fluctuate as much as logs; it does not fluctuate with the price of logs from year to year. Of course, it has an influence. If a man has a tract of timber and wants to sell it, he can't sell it as well if the conditions are not favorable; but if logs go down a dollar a thousand, timber does not necessarily move down that much; but there would be an influence, of course.

Q. So that, after all, the experience in operating logs does not show the timber, or market or stumpage, does it?

A. No, sir.

Q. And the log market might be low, and the cost of operation high, and yet the value of stumpage would remain unchanged?

A. Yes, sir, I think that is true. Stumpage sort of goes along on a more even plane.

Q. And is not influenced really to any great extent by the rise and fall of the cost of operation of logs?

A. Not any, minor changes in the value."

There has been no call during the past period of from 1912 to 1914, for the opening up of any new areas of logging operations, but there has been a tendency to do so. This tendency is on the part of the man that has to get money out of his timber to pay bills. There is not any call for the operation because of any demand for the product.

Witness is sure that the Lacey people could have operated their timber during the period of 1912 and 1914 at a profit of a dollar a thousand for stumpage. Witness' business has been operated at a profit during that time, both at Grays' Harbor and at Everett. They have not operated yet on the Pysht River, but have operated at a place where it would cost more to log than it would cost there, or than it would cost to log the Lacey timber. The personal element enters into it, but you are assuming the existence of average ability.

Q. Do you consider that a railroad such as you have described could have been put into the timber of the Lacey people in the period from 1912 to 1914, and the price paid for it during that period, and money made on the operation of that timber?

A. I do, on the basis of \$2.00 a thousand.

Q. But not at the rate of a dollar a thousand?

A. I said, basing it at \$2.00 a thousand.

Q. But money could not be made on basing it at a dollar a thousand?

A. Yes sir, a good deal more made, if you base it at a dollar a thousand.

Q. Basing the stumpage?

A. That is what I mean. I say we could make money on that during that period at the rate of \$2.00 a thousand for stumpage.

Q. That would be taking it as if you had paid

\$2.00 a thousand to somebody else for the stumpage?

A. Yes sir; there would not be any great profit in it, but we would not lose any money.

This railroad that witness refers to was to go out up the Pysht River over the Pysht Pass, or the Beaver Pass.

“Q. I think you said that eventually that would go out through Port Angeles?

A. It could go there too.

Q. What was your idea of the operation of this property, which route did you have in mind?

A. Of course, I could not tell; I have been there; I have walked over it,—I can point out on the map at the Pysht—I was over the ground several years ago with an idea of seeing how the ground laid for a railroad, and at that time I thought that that was feasible, and since then the Milwaukee has built in there part way to show that it is feasible. And I have always banked there on a road from Angeles to the Pysht. That has looked feasible to me by way of Lake Crescent.

Q. You have figured out, however, the length of the road in either instance?

A. You can estimate that from the map quite readily.

Q. You can?

A. Approximately, within a few miles. There are large belts of timber there, and a few miles of extra road won't make much difference in the cost of a thousand feet.”

Witness figured that 40,000 acres of land with three billion feet of timber on it would economically justify the construction of such a logging railroad; and there is a great deal more timber available there around the outskirts of the tract. “There is a world of timber, in fact, a belt of timber from the east end of the Lacey holdings down to Grays Harbor. A continuous belt.” That if there were twice as much timber as three billion a logging railroad would cost only half as much per thousand feet; that if the size of the holdings was decreased there would come a

point where it would not be economically feasible to construct such a railroad; that if there were only a forty acre tract owned by one man the assessor would have to assess that at nothing because it would have no value unless somebody else would help get it out; that an isolated 40-acre tract situated in the same location as the Lacey timber, and having no other timber around it, and being forty miles from the market would not be worth anything; that the same would be true of a thousand acres; that if there were two or three thousand acres, containing the only timber in that belt, it would not be worth anything, but if there was timber around there owned by anyone else, or owned by the State, or any other company, it would be worth something. The valuation of timber land is based on a theory of business, which is the only way that you can base values. If a man had a thousand acres of timber and a railroad should be built in to take it out, it would be worth something commercially, but the witness would not buy a thousand acres of timber lands isolated, forty miles from transportation, nor would anyone else, although it might have a speculative value.

As to the value of hemlock, if you have to tow it to market, it is not worth much; but hemlock may be utilized if you have a railroad and saw it on the ground. Hemlock makes good lumber, but in a stand of fir is rather defective. It could be carried on a barge to some railroad terminal, but not economically. Where the fir is heavy and thick, the hemlock is very defective, and not a good tree. Where there is a solid stand of hemlock it grows into beautiful trees.

“Q. Mr. Merrill, suppose I ask you the comparative value of timber that ran say, in this wise: Graded No. 1, 42, merchantable 35, and No. 3 23%, and I asked you to compare that with fir that ran 35, 42, and 23, which would you say was the more valuable timber?

A. That which grades the highest, considering it from the operating standpoint. Considering it from the operative standpoint, that which grades the highest.

Q. That which I read you first, in other words?

A. Yes, sir.

Q. 42, 35, and 23.

A. There would not be a great deal of difference. I do not think. You can figure that out, the percentages, and prices of logs.

Q. What is that?

A. To get at that definitely you would have to figure out the value of the different grades of logs.

Q. Those percentages would indicate that the character of the timber in one instance was very much better than the character of the timber in the other?

A. I don't say very much; it would be better. I could figure out the actual difference in the cost, or value, if you want me to.

Q. I am asking you generally which would be better?

A. The higher the grade the more logs are worth, not the more valuable the stumpage is, that does not follow the tree as stumpage.

Q. I understand that.

A. But the logs would be worth more.

Q. So if the assessor's books showed the Merrill & Ring timber around 42, 35 and 23, and the Clallam Lumber Company Timber in the largest zone there, which is called No. 2 here, ran 35, 42 and 23, you would say that the Merrill & Ring Timber, according to the showing of the assessor's books, was the better?

A. Well, I would say that the logs from that tract would bring more money in the market.

Q. That is what I mean.

A. Yes sir."

RE DIRECT EXAMINATION (By Defendants)

Witness states that in the estimate that he has made of the cost of railroad construction, he had charged the whole cost up to the timber, and allowed nothing for salvage for the railroad. He says that the steel would be worth considerable; that if he were putting in a road he would buy relays instead of new steel; that he would figure the cost of his road on

new steel, which is considerably more than the steel he would actually use.

Witness says that if the hemlock on the interior land was milled at Pleasant Lake, it would have a value. Milling the timber on the ground is the most economical method of handling both the timber of the plaintiff and the witness' own timber. With reference to the hemlock, the witness states, "Our hemlock is as good as the Lacey hemlock, I did not look at the percentages of hemlock between ours and theirs."

Witness is asked by the defendant, "Q. Has there been any substantial change in the value of standing timber per thousand feet in tracts sufficiently large to constitute a desirable operation since the first of March, 1912? He says, "There hadn't been much demand for those tracts, but that when you try to buy one, a good tract, that the owner charges pretty nearly as much for it as they did at any time"; and offers to give some illustrations.

"Q. (Mr. Peters) Those are illustrations of what people hold their timber at, but not what they sold it at?

A. What we are willing to pay for it and what they ask for it; what we have offered and what they have refused.

MR. PETERS: That would not be competent.

THE COURT: It would be some indication. It would be somewhere between those two points.

WITNESS: The difference is not very great.

THE COURT: It would be pointing in the right direction; The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

A. Well, we have made offers on a tract of timber in Chehalis County which is situated 25 miles or more from the market, tide water, and the route to get there is more difficult than the route to get to the timber in the interior of Clallam County; that is, more difficult and longer, or fully as long, as it would be to get from Clallam or the Pysht to the interior timber,

and we have offered two and a half a thousand for it, and that offer was refused.

THE COURT: This is since 1914?

WITNESS: Yes.

THE COURT: I do not think it would be much good to the court.

MR. EWING: What time was that?

A. It was this year. But I will say that I do not think as much of the timber to-day as I did a year ago, before the war. I would be more anxious to buy at that time than I would at the present time.

Q. Did you make a similar offer for any timber previous to that time?

A. We have been negotiating for that timber for the last seven or eight years. I have never been able to buy it. It is a nice tract of timber on rough ground. I think there is about eleven thousand acres of timber and there is about seven hundred million feet of timber on it. It is practically the same, there is just about as much timber on that tract as there is on the Ruddock and McCarty tract, and it is a much more difficult tract to log, and it would cost just as much to get it to the market as it would cost to get the Ruddock and McCarty timber to the mouth of the Pysht River. Also I would say that the grade of our road the road which we would have to build there, would be much in excess of the grade to the Sol Duc Valley. The grade on the Polson road between the Humptulips and the Hoquim is $1\frac{1}{2}\%$, and there is also a reverse curve in that grade which makes it equivalent to about 2% grade. Then, to get over, we have to cross from the Hoquim waters to the Wishkah and the grade there is over 3% adverse. It is down and up, 3% both ways. I noticed the other day that the testimony was excluded for the reason that as to a purchase of a small piece of timber you did not allow testimony because you said that might be an isolated case, and therefore would not show the value because it might be some peculiar condition which would influence it. I know of that case which was referred to, and I know of a great many others in the same locality. If

the court would allow, I would be glad to bring those in.

THE COURT: Unless the conditions are shown to be similar it would not be competent.

WITNESS: There would be no objection?

MR. RIDDELL: There is none right here.

MR. PETERS: The court said, if the conditions are the same.

A. And the conditions are the same, that particular piece of timber, the tract which Mr. Polson referred to, and we bought that of Mr. France and paid him over three dollars a thousand for it. I will say that we have bought in that vicinity, further from the market than that, at least a billion feet of timber, and we have not bought any of it in the last three or four years for less than two dollars a thousand. Mr. Polson is now, or went yesterday, to Portland to buy a single claim—

MR. PETERS: This is wholly incompetent, and we would have no opportunity to measure that Chehalis property.

THE COURT: The objection is sustained.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

A. I could say— mention a particular instance of different tracts that we bought and paid over two dollars a thousand for it.

MR. PETERS: Tracts that you did buy?

A. We bought and paid for.

Q. Within what period?

A. Within the period since 1912.

MR. EWING: That is competent.

MR. PETERS: I do not think that would be competent on direct examination. It would be for us on cross examination.

THE COURT: If it is equal distance from mills, or the market, or harbor as this timber is shown to be, if there is any similarity in the conditions I would admit the evidence. But these single tracts, where there is a railroad built in, I do not know what advantages occur from getting the land.

WITNESS: This is a large tract that I was

going to refer to, of five hundred million feet.

THE COURT: You may answer.

A. We bought a tract of E. K. Wood Lumber Company on which there was five hundred million feet of timber, and we paid in excess of two dollars a thousand for that.

Q. How is that timber situated?

A. That is in Township 21, Range 9.

Q. In what county?

A. Chehalis County, in the same belt the Olympic Peninsula belt of timber.

Q. What distance is that from the market or salt water.

A. It is 25 miles or more, Some of it is more than 25 miles.

Q. How would that be logged?

A. It would be logged by railroad after you built it. There wasn't any railroad in there when we bought it. We are building now to it.

Q. (Mr. Peters) How long ago did you buy it?

A. A couple of years ago.

Q. How many years?

A. I should say about 1912. I looked that up absolutely, at least three years ago.

Q. You think it was that date?

A. Oh, yes; fully that long ago. I think I had a map of it. It is in the north end of Township 21, Range 9, and it can be delivered in water in the middle of Township 17, North, and the road will be over 25 miles long. We have that much road built already and we have to build more road to get to it. There is also a tract of timber in the same locality in that township east that was appraised for a bond issue by a competent cruiser on the basis of over two dollars a thousand.

MR. PETERS: That would not be competent.

THE COURT: The objection is sustained.

MR. FROST: Note an exception.

THE COURT: Exception allowed.

Q. (Mr. Frost) Mr. Merrill, when did you first

make the offer of \$2.50 a thousand for the timber concernig which you have testified?

A. Well, the first time we offered them anything for that we made an offer on the basis of logging; we were offering to put the logs in.

MR. PETERS: What is the timber you are talking about?

A. The tract which Mr. France owns. We offered \$2.50 a thousand this spring.

Q. That was not an offer to buy the timber out in cash, was it?

A. They offered it to us on terms.

MR. FROST: What I am trying to do is to bring out the transaction.

MR. PETERS: It was a logging proposition.

A. It was a purchase of the timber which we would own, not log for ten years. No telling when we would log it. A purchase of timber to hold for future operations. You said I could not say about the appraiser?

THE COURT: Yes; I sustained the objection to the appraisal, that bond issue. We have had appraisals for bond issue before in this case, and I sustained the objection.

WITNESS: Would an appraisal for any other purpose establish the value?

THE COURT: The objection is sustained. Sales made are admitted, but anything else is not.

THE WITNESS: I would like to bring out another fact.

THE COURT: You cannot cross examine the man that made the appraisal, like you can cross examine a witness who has testified.

WITNESS: We have a tract of timber which was appraised at a certain value, which I do not think the plaintiffs would dispute the valuation of, or the competency of the man who appraised it.

MR. PETERS: I am sorry to interrupt the witness, but I see that he can't limit the testimony to what we consider to be the grounds of competency,

without asking the witness to answer the questions that are asked.

THE COURT: Just wait until the questions are asked, Mr. Merrill.

Q. (Mr. Ewing) Referring to the timber that you had made an offer of \$2.50 a thousand on, which you said you had been negotiating for, for seven or eight years. How long a period of time have you made that offer of \$2.50 a thousand.

A. We did not make that offer until this year; but we have negotiated, and we made offers on the basis of logging the tract before this time; but an offer for the purchase of it was made this spring.

Q. Did you make any offers of purchase during this seven or eight years?

A. We tried to get a price.

Q. What prices did you offer yourself?

A. We do not offer usually until we get the prices.

Q. And no price was made to you?

A. No, we could not get a price on it.

THE COURT: Are you through with the witness?

WITNESS: They asked me some questions, some points that brought out in their questioning me that I would like to explain my answers in regard to.

THE COURT: If you have any explanation to make of any answer you made, do so.

WITNESS: The question was asked me if we owned the land on both sides of the Pysht River, at the mouth, and I said that we did; and I suppose the idea was to convey the impression that it would be impossible for the plaintiffs to get their logs to market on that account. I will say that there is a place at the mouth of the Pysht River which we are willing to let the plaintiffs use and we will also give them a right of way for a private road of their own if they want it. In that connection, I might say that it is evident that they are trying to bring out that the Pysht River is the best place—

MR. PETERS: I prefer to have counsel ask the questions.

WITNESS: We have been trying to improve the mouth of the Pysht River, and we have had an expert down there for some time to see whether that is feasible, and now are having a survey made, and those experts advise us—

MR. PETERS: We object to what the expert advises unless he is here to be cross examined.

THE COURT: That is hearsay. You can't tell what he advised.

WITNESS: He has done it.

THE COURT: The objection is sustained to your telling what his advice was.

Q. (Mr. Ewing) Mr. Merrill, is your ownership at the mouth of the Pysht River an obstacle to the use of it by these plaintiffs for logging their timber?

MR. PETERS: I object to that. That is the matter for the court to determine.

THE COURT: It is a legal obstacle for the owner to put in the way of anybody that wants to cross the land. The Court will judge about that. The witness has already told about their willingness.

WITNESS: Can I tell what we have estimated the cost of improving the mouth of the Pysht River will be?

THE COURT: Your own estimate.

WITNESS: Yes, sir; we figured two hundred thousand dollars. And, of course, Clallam Bay is available, so that at the present time the Goodyear people are logging there, and they are now building a banking ground on a piece of ground which we own and which we told them they could use at a nominal rental.

And also the question was asked me if we did not at the time we started purchasing timber on the Pysht have the selection of all the timber in Clallam County, and I answered "Yes, sir". I want to explain that at that time when we commenced buying there we did not know of the existence of this tract of timber in the interior, and we did not know about it for some time, and at that time also the people did not log back

more than two or three miles from tidewater, because the only means of logging was with oxen, and it was impractical to go more than a mile or so from tidewater to get logs. Railroad logging was not known. In about 1892 we sent some men over there into the Sol Duc Valley and they found this body of timber and tried to locate it. We put lots of men in there to take up claims, and we were unsuccessful because the Government turned us out. About that same time when we were putting men in there we had—

THE COURT: The Statute of Limitation have run against that, I suppose.

MR. PETERS: It has as to the quality of what we may do under the law, but not as to the credibility of the testimony;

WITNESS: I did not understand the law, Mr. Peters. I supposed that was permissible.

MR. PETERS: No; timbermen have not generally understood it.

Q. (Mr. Frost) What is your age?

A. Forty-six years.

Q. How long have you been engaged in the logging and lumber business?

A. I have been in the lumber business since 1893.

Q. How long in the state of Washington?

A. I have been here since 1898.

Q. Constantly in that business?

A. I want to say another thing, that it would look to one looking at that map as if the Pysht tract, you could go there any place and put logs into Puget Sound along the shore. I want to explain that that is not practicable, and that in logging that we will log all our timber to one point.

THE COURT: You explained that yesterday.

WITNESS: Did I?

THE COURT: You said it would have to go to one central point to be landed.

WITNESS: Yes, it would have to go to one central. I also made the statement that they asked the value of the two tracts of timber, the tract on the Straits and the tract on the interior and I said I thought

they were of equal value. According to my figures there might seem to be a discrepancy, because,—according to what I said that timber in the interior would be logged very much cheaper than that on the exterior, much more than would be necessary to off-set the difference in the cost of hauling across that divide, and the difference in the quality of the timber. The reason I did that was I wanted to be on the safe side. I looked over those estimates as carefully as possible and I treated it just as if I would have treated it if I was going to buy a tract of timber. I figured on the safe side, and I left a margin in favor of the other side in my statement.”

RE-CROSS EXAMINATION

Witness says that he expects that it will cost his company some two hundred thousand dollars to prepare the mouth of the Physt River for logging purposes; that while this will not be a very good logging ground, it will be sufficient for operating their tract of timber at the rate of about one hundred million feet a year. This capacity could be increased, if necessary. While witness thinks that it would be the most economical method of operating the lumber to build a mill at the mouth of the Pysht, they do not contemplate doing so, because their finances are limited. But they do contemplate building a small mill to manufacture the hemlock.

The witness concludes: “In this testimony which I have made, I figure that we have sort of worked against ourselves, in a way, because we have always had an eye on the timber on the interior.

(Witness excused.)

S. A. WALKER, a witness, sworn on behalf of the defendants testified as follows:

DIRECT EXAMINATION

He is a civil engineer of fourteen years experience; has had experience surveying, laying out, and constructing logging roads,—four years experience at this. During this fourteen years he has been employed by the Northern Pacific Railroad Company, The Mil-

waukee Railway, The Copper River and Northwestern, and the Spokane & International; has been employed by the Merrill & Ring Lumber Company.

Witness made an examination for a route of a railway from the lands of the plaintiff in the interior to the Pysht River across Beaver Pass; thinks that a grade of two per cent from the summit to the Pysht River, in a distance of eleven miles can be obtained; found no unusual condition, or obstructions that would make the railroad costly; made no detailed estimate of the cost of constructing such a railroad, but in his opinion, the cost would be five thousand dollars for the sub-grade, and six thousand dollars above it as the higher cost, or eleven thousand dollars a mile, using sixty pound steel. From the summit down the the Sol Duc River witness believes he could get a grade of one per cent from the summit to Sapho. Sapho is a post office near the Sol Duc in the heart of the interior lands. He estimates the cost of such a road from the Pysht or Clallam Bay to the Sol Duc and the heart of the territory marked in bright red on the map (Defendants' Exhibit 18) as follows: the eleven miles from the Pysht river to the summit, and seven miles to the cross road, or eighteen miles, at eleven thousand dollars a mile, or \$191,000.00. The maximum curvature on the road would be fifteen degrees, making the road curvature and grade easily and inexpensively operated. Regarding the course and termini of the road, the cost of which he had testified to, the witness said, "The summit here is in the center of the southwest quarter of Section 35, and I have followed right down the County road, the side hill near the County road to the quarter corner between sections 26 and 27." The terminus on the north was Pysht and on the south was the summit of Section 35, the divide between the Pysht and the Sol Duc; to make the 18 miles he had figured upon the road would have to go on down to the cross roads, a little below Sapho, east of Lake Pleasant. The road referred to would hardly be as good a road as a common carrier would use, but would be a good logging road.

Witness was in this country six months one summer, and four months the second. The investigation was made for the Merrill & Ring Lumber Company. (Witness excused.)

N. I. PETERSON, a witness sworn for the defendant, testified as follows:

DIRECT EXAMINATION

He is engaged in the logging business, and has been for twenty years; is now in Dungeness, the east end of Clallam County; has been in active supervision of logging operations during that time in the State of Washington; has bought timber lands in the state, but has not sold any; says that he is familiar with the market price of logs, and the market price of timber and timber lands; has driven through the timber lands of plaintiff, has looked over the county cruises of those lands to some extent; His logging operations have been in the extreme east end of Clallam County. The timber there is fir, cedar and hemlock. The quality is rather a poor grade. The timber runs between about five and ten per cent No. 1 logs, forty per cent No. 2, and the balance No. 3.. From what he has seen of the plaintiffs timber in the interior, in zone No. 2, witness' timber does not compare at all with it. His is poor. Theirs is good. Thinks the timber in the west end is worth double that it is in the east end. Thinks the market value of plaintiffs timber in zones No. 2 and 4, March 1st, 1912, was about Two dollars a thousand, fir, cedar and spruce. In the east end of Clallam he has bought some timber for a dollar a thousand, and bought some for two dollars. The value of the timber in these respective zones in 1914, would be the same as 1912.

"Q. Are you at all familiar with the timber in what is known as zone No. 1, or the Straits Zone, being the holdings of the Puget Sound Mill & Timber Company, otherwise known as the Earles Timber, and the Milwaukee Land Company Timber and Merrill & Rings, and the Goodyear Timber Company?

A. I have seen a very small portion of the Good-

year timber, but I have never seen the Merrill & Rings, that I know of, nor the Michael Earles timber.

Q. Have you made an examination of the county cruise of this timber?

A. I looked over it, to skip through it.

Q. Please state what, in your opinion, is the market value of this timber on the first of March, 1912?

A. I should say \$2.00.

Q. About \$2.00?

A. Yes, sir.

Q. And on the first of March, 1914?

A. The same."

CROSS EXAMINATION

Witness has lived at Dungeness for six years; has been operating there for that time; logged about six or seven thousand acres. They logged into Dungeness Bay, a little lagoon. They are not right on the tide water, but have logged as high as ten miles back. There is a railroad there. They bought out the entire outfit; also the equipment. During that period the price of logs, with the exception of a couple of months, has been, six, eight and eleven dollars per thousand. The market has remained the same from March, 1912, down to March, 1914. It has not bettered any. His trip through the plaintiffs lands was made on the fifth of July last. He went through with his family and another family in automobiles. His attention was not directed to the Lacey timber at that time. He did not go through with a view of investigating; merely went through on a pleasure trip; never been through it any other time. Witness looked at the county cruises in much the same way that the other witnesses of the defendants examined them, Mr. Newbury, and Mr. Chisholm; no more in detail than theirs. He looked at them for the purpose of being a witness in this case. The assessor just opened the books and said, "Here is some timber." Witness did not look over the Lacey timber any more than other timber; took no tabulated statement of it.

Q. You took it page by page and looked over what was said about the sections on that particular

page. You made no notes of it with a pencil or paper, and turned over and looked at the next, and so forth, and that is the examination that you made, and all the examination?

A. Yes sir.

Q. Did you make an examination of that same character with respect to the Straits Timber?

A. Yes, sir, as far as I went.

Q. On the same occasion?

A. Yes, sir.

Q. About how long do you think you were, making that examination over the books?

A. Not very long.

Q. About how long?

A. Maybe an hour or two.

Q. Not over two hours?

A. No sir, I don't think so.

Q. And you examined then the 41,000 acres, of one class of the Lacey timber and 8,000 of the Ruddock and McCarty timber, and some 25,000 acres of the Pysht timber, and 21,000 acres of the Goodyear timber in the course of two hours?

A. I do not think I examined the whole bunch of it. I did not go through the whole book.

Q. You did not make any such examination that you would care to go there and buy that timber on, on the examination you made, did you?

A. Well, no. I do not know as I would."

Witness does not base his valuation on timber in the west end upon any sales, but on the body and volume of timber that is in there. Witness does not know of any sales having occurred within the last five years in any of the lands marked in green on Defendants' Exhibit 18, or those marked in yellow, meaning the Lacey lands. He does not know of a single sale having occurred there. He does not know the price of any timber land sold in the west end of the county. Thinks the hemlock in the west end of the county is worth from twenty-five to thirty cents a thousand. made no examination from the cruise, or personal inspection of the amount of hemlock. In the witness'

operations in the east end they have some high ground to traverse on their railway; not very steep hills. They have ten or eleven per cent grades on it where they go into their timber on spur lines. They have five % grades on their mainline both going in and coming out. It is a good country for logging.

On re-direct examination the witness says the ground of the plaintiffs timber on the Calawa and Sol Duc Rivers, such as he saw, was good ground. He saw some hilly land, but did not see any timber on it. He thinks the plaintiffs lands are more favorable for logging operations than his. Where witness is they have about fifteen or sixteen thousand feet of logs to the acre, and over on the plaintiffs there is a great deal more, four to five times that in some places.

RE-CROSS EXAMINATION.

Witness had taken no observation while going through the timber with a view of telling whether the lands were good logging, or not.

“Q. When did you think of it again?

A. When I thought of it again?

Q. When did you have it called to your attention again? You said you were not down there to make any investigations?

A. No.

Q. You did not know there was any lawsuit involving all these lands, did you?

A. I had been in the business a good many years, and whenever I go into timber I most generally pay some attention to it, always do.

Q. All that you saw was simply what you could see from the automobile road?

A. Not altogether, no.

Q. Did you stop and go into the timber at all?

A. Yes sir, I did go into it a little.

Q. When?

A. Right there on that trip.

Q. Where did you go?

A. I did not go into only just into the timber off the county road, just a short distance.

Q. Whose timber did you go on?

A. I could not tell you.

Q. You do not know what timber it was, do you?

A. No, sir.

Q. How many trips of that kind did you make going into the timber at that time?

A. Wherever we camped, sometimes we would look around a little.

Q. Could you tell from the map where you did camp?

A. No sir, I could not.

(Witness excused.)”

R. W. REMP, recalled as a witness for the defendant, testified as follows:

DIRECT EXAMINATION.

Witness made a survey for the location of a logging railroad from the Summit down to the mouth of the Pysht River, and found it possible to construct the road there on a working grade of 4% in favor of the load down to the Pysht river, on an 8.2 mile line. By lengthening out that line 2 miles, the grade could be reduced to less than 3%. From the summit down to the Sol Duc, witness thinks he could run on a four per cent grade straight down the valley. At the Summit in the Southeast quarter of the southeast quarter of Section 35, Township 31, Range 12, the elevation is 797.5 feet. The elevation of the crossroads at Sapho is 452 feet, a difference of 327 feet, which gives less than 1% grade. The survey was terminated at the cross roads where the Sol Duc road meets the road to Clallam. This terminus would be about the favorable place to reach the plaintiffs lands with spurs from the main line.

Witness, on cross examination as to his competency to testify about the cost of construction of railroads says; That he has built railroads. He superintended the construction of the R. R. & N. Railroad from Tillamook to Buxton, about one hundred miles long, a logging road. That was from 1908 to 1910. He was assistant to Mr. Cook, assistant chief engineer of the Northern Pacific Railroad for four years,

had charge of construction work under him for about two years and a half. He moved the bridges at Gray's Harbor, and made the line changes that were made down there; considered the heaviest piece of construction on Grays Harbor; that being a branch of the Northern Pacific; moved the bridges under traffic, and put in the steel that is there now.

In making his estimate of the cost of constructing the logging railroad regarding which he testified, the witness stated that he took the cost mile by mile from the mouth of the Pysht River, and included in his estimate culverts, road boxing, curbing, clearing and burning. He provided for clearing 40 feet, an average break 20 feet wide throughout, in many places it would not be so wide as that, that is about the ordinary method of railroad construction—the roadway 20 feet wide. He had the whole estimate totalled and averaged, and had embodied it in his written report in his own hand writing. The total estimate up to sub-grades for 8.2 miles for 60 pound steel was \$47,518.58, an average of \$4715.58 up to sub-grade. With 65 pound steel he figured \$5816.00 per mile, or a total of \$95,209.78. That was from the top of the hill down to the mouth of the Pysht River. Witness then corrects himself and states that his first figures were for cost to sub-grade, on 56 pound steel, the average cost being \$10,351.17, and for 65 pound steel the average cost would be \$11,610.94; that would construct a road as well constructed as the average main line of a common carrier railroad. He figured that the same average would cover the cost from the summit down to the Sol Duc, but states that that would be a-way up high. The distance of the whole line from the mouth of the Pysht to the Sol Duc, or the Forks would be 14.83 miles by the witness' survey, and his estimate of the total cost of a completed railroad, ready for operation, to the Forks road on the Sol Duc from the mouth of the Pysht, for 65 pound steel, would be \$173,000.00. This would provide for a maximum curvature of 15 degrees, which could be reduced by working it out a little. On cross examination he stated

that the distance from Sapho to the middle of the McCarty lands is about six and one-half or seven miles, measuring from the cross roads at Sapho.

CROSS EXAMINATION

Defendants then introduced in evidence as exhibit 28, the field map used by defendants witness' when down upon the tracts. This map shows the zones for the year 1914, and the assessments for that year. The black lines on Exhibit 28 show the county road running down to the plaintiffs' tracts, showing the road the plaintiffs' witnesses took on the automobile trip.

(Witness excused.)

J. E. FROST, one of the counsel for the defendants, testified as follows under oath:

DIRECT EXAMINATION.

He resides at Seattle, or at his logging camp, about forty-seven miles east of Seattle. Three or four years ago he retired from the practice of the law, in which he had been engaged for more than twenty years, and became engaged in the logging business. Witness was a member of the State Board of Land Commissioners from 1907 to 1912, during which time they had cruised and appraised, and sold many tracts of timber land throughout the state of Washington, and witness participated in such appraisal. Until July 1st, 1912, he was a member of the State Capitol Commission. As such, they had cruised and appraised approximately one hundred thousand acres of timber land in western Washington, of which about twenty-seven thousand were situated in the west end of Clallam and Jefferson counties.

From 1905 until July 1st, 1912, he was a member of, and a greater portion of the time, president of the State Board of Tax Commissioners.

"A. If I may tell the whole story. In the early history of that commission it started on a thorough line of investigation as to the manner and method of assessment of various classes of property throughout the State of Washington with reference to its char-

acter, and value, and fairness of assessment. We made a very exhaustive investigation of the manner and method of assessing timber lands throughout the various Counties in the State, and followed that up with a very earnest campaign for a cruise in the State of Washington for timber. I think that resulted in cruises by the various Counties in Western Washington of the timber lands within their borders. I may say also, that it is the duty of the State Board of Tax Commissioners to assess these public service properties in the State. The Board of Tax Commissioners also comprise the majority of the State Board of Equalization, and the law provided for the assessment, of the Public Service properties of the State, and by that I mean the railroads, and telephone and telegraph lines, and other kindred public service concerns. The law provides that they shall be equalized in the various counties at the same proportion of their actual value as the general mass of property within that County may be equalized and assessed. And, in order, for instance, to arrive at the proper ratio of the equalized, to the actual value of the railroad, it becomes necessary for the State Board to ascertain what the ratio of assessed to the actual value is, of the properties within the Counties in which that railroad, or public service property is situated, and in order to do that, and under the law it granted the State Board of Tax Commissioners the power to subpoena and compel the attendance of witnesses. A great many witnesses were examined throughout the State of Washington, as to the actual, or to the market value of property, and I myself conducted those hearings, in which I examined, under oath, many men who were qualified under oath to testify to the value of timber lands. I held those hearings, personally, in Clallam County.

MR. PETERS: I do not see what competency this would have upon this question, unless it is going to be that the witness will follow it up with the statement that he made some examinations there of witnesses, and reported what he found. If we had had an opportunity to examine those witnesses, it might

have been competent, as to what was found, but it is not anything possibly which would bind us. It ought not to be allowed, because we had no hearing there.

THE COURT: I think it is leading up to something. If it is immaterial, you may move to strike it out afterwards.

Q. (Mr. Ewing) Mr. Frost, will you state the nature of your practical operations as a logger?

A. I have been engaged in the logging business for about three years, and have, during the last two years of that time, been in active supervision; that is, on the ground, and in the field. During the first year of our logging operations, we had a logging superintendent, and I acted as manager of the Company with offices in Seattle. Two years ago I abandoned the Seattle office and discharged the superintendent, and moved my bookkeepers and stenographers and office outfit into the woods, and since that time I have had actual superintendence of all the practical logging operations, including the marketing and selling of the logs.

Q. You refer to "we" and "our"; what company do you refer to?

A. I am secretary and manager of the Cedar Lake Logging Company, and the operation.

Q. Where is the seat of that company?

A. We are operating partially in the Cedar Lake water shed, and partially in the Snoqualmie water shed.

Q. That is in—

A. In King County, State of Washington.

Q. What actual, practical experience in the construction and operation of logging railroads have you had?

A. We are constantly building logging railroads. We have a force of men constantly engaged in building logging railroads and spurs, under my own supervision, and I might say that I started out in the logging and lumber business in Pennsylvania a great many years ago, and in the employ of the Frost Lumber Company in Pennsylvania, and I there supervised and superintended the construction of logging roads that

were put in and other railroads leading it down through the Allegheny Mountains to the operations of this Company. If I may add to my qualifications, that I, in my boyhood days, was in the employ of the Pennsylvania Railroad for approximately two years, as a civil engineer, and in charge of railroad grading, and in charge of the track laying upon the Ridgway & Coalville Railroad, and that I also worked as a civil engineer upon the construction of the Buffalo? Rochester & Pittsburg in Pennsylvania.

Q. With what kind of timber, and their valuation, have you become familiar during your experience in the State of Washington?

A. Well, all of the commercial timbers of western Washington.

Q. Could you name the commercial timbers of Western Washington?

A. They are principally in the order of fir, cedar, spruce, and hemlock.

Q. What are the facts with reference to your having kept in touch with the lumber markets of Western Washington during the time covered by your operations with the Cedar Lake Logging Company, to which you have referred, with reference to the prices which have obtained for those various kinds of lumber that you have mentioned?

A. We are quite extensively engaged in logging, logging from five to seven million feet a month, and I have marketed all of our output at all times.

Q. And you know generally what the prices have been during the last two or three years say, or two years and a half?

A. I do.

Q. You heard the testimony of Mr. Polson with reference to hemlock in the lands of these plaintiffs in this suit. He put the valuation of a dollar a thousand upon hemlock; are you familiar with the commercial uses of hemlock?

THE COURT: Did he put the valuation of a dollar a thousand?

MR. PETERS: It must have been when I was out of the room.

WITNESS: My recollection of Mr. Polson's testimony is that he said that a large portion of the hemlock could be used in logging operations, and such as could be salvaged would be worth a dollar a thousand stumpage.

THE COURT: I did not remember it.

MR. EWING: If that is incorrect it may be stricken. What I want to get at is the commercial uses of hemlock lumber, will you explain that to the court?

A. Well, yes. Clear hemlock is largely used in siding and finished lumber; that has a market in the extreme east where they are familiar with hemlock. The ordinary grades of hemlock are largely used by box manufacturing concerns in the manufacture of boxes.

Q. What kind of boxes?

A. All kinds of boxes, but it is principally valuable, the hemlock of Western Washington is odorless, and it is largely used in the manufacture of boxes that might contain butter, or other things that absorb odors, or flavors, and it is in great demand for that purpose.

Q. State whether or not there is an actual market for hemlock lumber?

A. There is a very good market for hemlock. If I may go on, the market price of hemlock logs increased in the past three years.

Q. Between what sort of a range of figures?

A. When I first began logging operations about three years ago, our hemlock was sold at a No. 2 fir price, or slightly under that.

Q. What would that be in dollars and cents.

A. Hemlock was selling from five to five and a half. During all our operations last year I sold hemlock for \$6.75 a thousand, or approximately a dollar and a quarter advance in the market price on hemlock logs. I am now receiving for hemlock logs \$6.50; so that there is an actual value to hemlock logs.

Q. And in your operations you market them as a separate part of your output?

A. Our hemlock and spruce are assorted separately. I may say that the inferior grades of spruce are largely used for the same purposes that the hemlock is used for, and we sort our hemlock and spruce and sell it together ordinarily, although I have sorted some hemlock by itself and sold it separately, where we have had a special demand for it.

Q. Now, in the matter of building logging railroads, what would you say for the use of hemlock for purposes of that kind?

A. Well, I am using in the construction—I have this year—well, I suppose we have built and re-built from six to eight miles of railroad this year in building our logging spurs and getting onto our landings. We endeavor to lay the logging operations out so we will run a spur out to put the landings on, and we log between twenty and thirty acres to one landing. Those logging spurs and landings are built over and over again. Possibly we have built ten miles in our operations this year, and I am using hemlock ties altogether, which I have hewed upon the ground, and we use hemlock wherever possible, the defective hemlock, in building landings on which logs are hauled in order to put them on the cars.

Q. So despite the preponderance of the more valuable classes of timber, in a large yield there is, nevertheless, an actual market value for hemlock, is that true?

A. Yes, sir; there is a very active market, in the past two years, for hemlock. It has been with us, a much more ready sale than fir. Hemlock and spruce, I may also add, that the market price of spruce logs has increased, and spruce logs are at a higher market price now than they have been at any time since I began logging operations three years ago.

Q. Mr. Frost, what is the length of the logging railroad you operate over?

A. Our mainline is approximately seven miles, with spurs going out into our various logging opera-

tions, as we are hauling from six to eight miles.

Q. What is the greatest maximum curve of your railroad?

A. An eighteen per cent curve.

Q. What is the greatest maximum gradient?

A. We have one grade of 3.05%. Miles of it average 5.6% the whole distance. I want to say, in saying the average that that 5.6% is contemplated, as we call it, on a curve; in other words, it is flattened on the curve, and steeper on the tangents, or straight line.

Q. Do any of those curves or gradients to which you have testified, militate materially against the successful operation of your railroad?

A. We are moving over that road now, from forty to fifty standard carloads of logs per day, and we are operating our main line with one locomotive. If, I might add, that we have in the holdings that we are logging, that is, in the timber which we purchased, we have an unusual large percentage of hemlock mixed in with fir, so that we marketed last year, I suppose, approximately nine millions feet of hemlock, during the year, 1914.

Q. Hemlock then is a commercial timber in Western Washington?

A. We find it very much so. It was the most profitable timber we logged last year. If I may add, that our hemlock during 1914, we operated a log dump in the City of Seattle, and that our hemlock was all dumped into salt water, rafted and towed from Seattle to Anacortes and Bellingham, where the large box factories are situated, to whom I sold the hemlock, to tow that is fully as far as the tow from the mouth of the Pysht River to Anacortes or Bellingham. That condition does not obtain now. The tow is not quite so far, because of the fact that I am now dumping the logs, and my reason for making the switch is, that last year I paid \$1.60 per thousand feet from where our railroad connects up with the Milwaukee system and this way they made the rate of \$1.40 to Everett, which is 20c cheaper, although a longer haul, which

caused me to abandon my dump in Seattle and move to Everett; and our logs are now being dumped in Everett, and towed from there, a shorter tow.

CROSS EXAMINATION.

BY MR. EARLE:

Q. I did not get those last figures, Mr. Frost, what are those rates that you received to Seattle on the railroad?

A. Our rate to Seattle was \$1.60 per thousand feet, and if I can make an explanation of the rate, because that does not explain it all, we have to Seattle, the railroad fixed a minimum load of seven thousand feet per car, that meaning, if we failed to get seven thousand feet of logs on a car that we had to pay for the full seven thousand feet. Our logs were small and frequently we were not able to reach the minimum, and with the result that our actual freight was more than \$1.60. During the first year of our operations freight cost us \$1.72 a thousand because of the fact that we were not able to reach the minimum load. In this rate to Everett the Milwaukee Railroad, dealing with the same railroad, fixed the minimum of sixty-five hundred feet to the car, and the rate of \$1.40 which was a considerable advantage to us in doing that, and which caused us to make the change, and they stated that the Everett line was a branch line of railroad and they preferred to handle logs over that line rather than the main line of their transcontinental railroad, and they gave us that rate.

Q. This \$1.60 rate represents how long a haul?

A. That represents forty miles of haul.

Q. And the \$1.40 rate represents how long a haul?

A. 59 miles."

This is the only logging operation that the witness has been engaged in. He has made no other purchases of timber than the purchases through his Cedar Lake operations. They purchased from the city of Seattle about one hundred and eight million feet in a competition sale. This timber they are removing from the shores of Cedar Lake, which will be submerged

when the level of the lake has been raised. It is partially on the edge of the lake, but in some places, they cut back two miles from the lake.

A. No, sir, we built the whole line of railroad from Cedar Falls to Cedar Lake 4.37 miles of that road was built under contract with the city of Seattle, which provides that we shall keep and maintain the road, and operate it during the duration of our logging operations up there, and at the expiration of that time, the road is to be turned over, and to become the property of the city of Seattle. We built that under contract with the city of Seattle, and our contract price for grading, laying of steel, and ties and ballasting that 4.37 miles of railroad, and putting it in complete condition for operation, with unusually severe specifications, was \$3,750.00 per mile. The city furnished the 4.37 miles of steel, fastening and ties, and the remainder of the main line of railroad leading from the termination of the city road to our logging camp is our own road, our own steel, that we built ourselves.

Q. How many miles?

A. Approximately three miles of that, and then we have many branches and spurs leading off to our operations around fine timber. We purchased from the city only about one third of our operations, our purchases from the city, and the other operations we have under contract with the Weyerhaeuser Timber Company.

Q. Coming back to the railroad construction, is it not a fact that the city of Seattle built a road in from the main line of the Milwaukee, about, approximately one mile from the lake."

Witness says that under the contract with the city of Seattle, their logging company pays for the timber each month as they take it off, on a monthly settlement basis, and they have no particular risk, so far as the ownership of the timber is concerned, except as to the timber cut and lying upon the ground.

Witness does not think that the hemlock which he has got at Cedar Lake is better grade than the usual hemlock. Some of his hemlock is pretty good,

and some is low ground hemlock. This is hollow butted and heavy, and usually not clear, and the limbs grow close to the ground. Upland hemlock is taller, straighter, and smoother, and not inclined to ground rot.

“Q. Don't you know from the condition of the log market that you are getting better than the regular market price for hemlock?”

A. No sir, I do not think so. I think I have been getting the market price during the time I have been engaged in the logging business. I have no especial advantages over other loggers. I have had to rustle for the market. I went in under a disadvantage, because most loggers had an established market and I had to find one.

Q. Your logging operations are confined to those which you have at the present time at Cedar Lake?

A. My logging operations are at Cedar Lake.

Q. And your opinion as to the value of hemlock is based upon your experience in your logging operations at Cedar Lake and the hemlock there?

A. Well, no, my opinion is formed from a good many considerations, and I presume I have been very much like a boy with a new mechanical toy. Going into the logging business I became very deeply interested in it, and I have made a most thorough and comprehensive study and examination into all the phases of the logging and lumber business in the Northwest, and in the State of Washington, and my judgment is based, not only upon my own experience in logging, but upon the conditions surrounding it, and surrounding its use and demand for it. If I was to testify as to the value—

Q. Do you happen to know of any sales of hemlock having been made except those that you have made in your Cedar Lake operations?

A. You mean sales of hemlock logs, or timber?

Q. Sales of hemlock logs.

A. Not specifically. I do recall, I believe—I had in mind, and was trying to tell you of one special instance that—I am not sure whether it is in Jefferson County Logging Company, or not, but I was told—

MR. PETERS: Wait a minute—

WITNESS: By one logger last year that he received seven dollars a thousand for his hemlock.

MR. PETERS: You understand that when your question is objected to, you should stop. You are lawyer enough to know that you should wait until there is a ruling, and that the witness is supposed to wait until the Court rules.

I object to what was said to him, or what was told him by somebody else.

THE COURT: The objection is sustained.

WITNESS: Ask your question over.

Q. (Question read)

A. Any knowledge that I might have of the sale of hemlock logs would be error, under the ruling of the court. I understand I would not be permitted to testify to that.

THE COURT: The question is, was that all the information you had; that can be answered by yes, or no.

A. I have information, yes, in a kind of a way.

Q. Your fee from the County of Clallam, as attorney for the defense in this litigation, is partially on a contingent basis, is it not?

A. Am I obliged to answer that question?

THE COURT: Yes, you may answer it.

A. Yes sir. May I explain for the plaintiffs?

THE COURT: Yes.

WITNESS: I will undertake to fix the date by that month that I returned from our logging camps to visit my home in Seattle. I received a telegram signed by the County Auditor of Clallam County asking me if I would not come to Port Angeles to once. I came home Saturday night, arrived here about eight o'clock, and I took the boat for Port Angeles that night arriving there Sunday morning. I found the Board of County Commissioners, the County Assessor, the County Treasurer, and the County Auditor and the County Attorney of Clallam County, to meet me there on Sunday morning. They asked me to appear in this case. I think the Chairman of the Board of Commis-

sioners, I told him that I had retired from the practice of law, and no longer maintained an office; that I was engaged in the logging business, and would prefer that they retain other counsel. I was urged to take this case, because, as they said to me, I am experienced in matters of taxation, and because of the fact that I have appeared as counsel in a great many important tax suits in the northwest in the past few years, having appeared for Lewis County, in the trial of the Lewis County timber cases, for King County in the suit brought by Stone & Webster, interested in the Seattle Electric Company, and appeared both in the Superior and the Appellate Court; and those were the reasons that they urged——

MR. PETERS: I object to all this——

THE COURT: The reason you are compelled to answer is as to how it would affect your interest as a witness.

WITNESS: May I go on with the Commissioners? The Commissioners asked what my compensation would be. I says, "Gentlemen, I am not engaged in the practice of law and I will leave the compensation to your own discretion. I will take whatever you want to give me. I am not appearing because I desire to practice law, but because you urge me to do it, and the matter of compensation will be left to you, and you can pay me whatever you see fit, and since that time I have had no conversation with any of the Board of Commissioners, or County officials of Clallam County, in regard to the fee that would be paid me; but in order to comply with the Statutes of the State of Washington, they made, so far as my knowledge is concerned, their own terms, and tendered me a contract which I signed, and that was drawn up, and bears the O. K. of the County Attorney, and the approval of the Superior Court of Clallam County.

Q. (Mr Peters) And that is a contract for the contingent fee?

A. Yes, sir, that is a contract for a contingent fee, not entirely so. I am to receive a larger fee in the event we win suit.

Q. In the event these defendants are successful you are to receive twice as great a fee as in the event you are not successful?

A. Yes sir, that is true.

Q. How far is this operation, your logging operation from Seattle.

A. It is approximately 47 miles, 40 miles to the Milwaukee Railroad, and about 7 miles to our logging road; in a direct line it would not be so far.

(Witness excused.)”

G. M. LAURIDSEN, recalled as a witness on behalf of the defendants, testified as follows:

DIRECT EXAMINATION

Witness is handed a document which he states is a list of property he owns in Clallam County, with the exception of his residence and a couple of lots that he built on since the assessment in 1914.

Witness lives in Port Angeles; has lived in Port Angeles since 1892. Has no particular business, but is vice-president of the Citizens National Bank, and spends considerable time in there. His principal property is in Port Angeles, city lots; has had considerable experience in buying and selling real estate in Clallam County for the past twenty years; has kept pretty well in touch with real property values. The list which he has in hand is a tabulation of witness' estimate of real property values as compared with the assessment of same property for the year 1914, as put upon it by the assessor of Clallam County. This is a list of witness' own property. The valuations represent those at which the witness would be willing to sell his property in March, 1914. Witness is cross examined as to the competency of this list. He made up this list at home last Sunday and Monday. It was after he come down to be present at this case, after he had come down and gone home again. He came down here under the subpoena of the plaintiffs on Monday, and remained here during the first day or so of the trial; was here during the time that Tom Aldwell was under examination.

With reference to a list of property said to have

been handed in by him in an appraisal, plaintiffs exhibit "E", witness was not requested by anybody to hand in that statement. He volunteered to give the defendants figures after I saw that thing there.

Q. By this "thing" here, you refer to plaintiffs exhibit "E" that Mr. Aldwell was examined by?

A. That thing we were tricked into sending.

Q. That thing that you were tricked into sending; after you saw that and heard the testimony about it, did you tell counsel for the defense that you would go home and make up a list of property?

A. Yes sir, I told them that I would give them the real values of things. I told them I had about one hundred thousand dollars worth of property that I would offer you if you would take it at double the assessed valuation that was put on it in 1914.

Q. And they did not take it at that?

A. I was going to offer it to anybody that would take it.

MR. RIDDELL: There is a chance, Mr. Peters.

MR. PETERS: You suggested that you would go home and make an appraisal of all your property?

A. There wasn't any particular suggestion. I told them I would offer everything I had in Clallam County at double the assessed calculation in 1914.

Q. Then you went back and you checked up all the property that you have in Clallam County?

A. Yes, sir.

Q. And made a list of that as you have here?

A. Yes, sir.

Q. Then you took the assessment from the assessor's books?

A. No, I took from my tax receipts.

Q. And was that for the year 1914?

A. 1914. I did not have time to make them all up, so I brought a number of tax receipts and finished them up here.

Q. Did you take them for the year 1912?

A. No.

Q. You did not take them for that?

A. No sir, only for 1914. It is not all of them.

There are about six hundred lots, additional lots that are not on there. Those additional lots I will offer at the assessed valuation. If anybody will take those six hundred and thirty additional lots they can have them at the assessed valuation as put on by the assessor in 1914."

This tabulation of witness' values is admitted as defendants exhibit "29."

"Q. Mr. Laudirsen, will you take your memorandum (will you put exhibit "29" before the court)?

MR. PETERS: I desire the witness on the stand to give his testimony without the memorandum.

MR. EWING: I do not see how he can refresh his memory without the instrument before him.

Q. I wish you to indicate to the court on what part of the memorandum, or tabulation, are the six hundred lots which you would sell for their assessed value?

MR. PETERS: I do not think that is competent, what the witness will sell property for at this time.

MR. EWING: I will limit the time to the 1st of March, 1914.

MR. PETERS: That is not it; what was the market value, not what he might, or might not, sell it for.

THE COURT: It is a declaration against interest. I will overrule the objection.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

MR. PETERS: It is not an admission against his interest; if he could make a deal it would be much to his interest.

THE COURT: The question is not a part of the list these descriptions occur in—

MR. PETERS: He has changed it. He can ask at what price would he sell those lots for.

MR. EWING: I want to have him show to the court the tabulation that has been made, on what part of the tabulation is that list of lots which you say you would sell on the first of March, 1914, for the assessed valuation?

A. The last two sheets.

Q. And the valuations you put upon them on the first of March, 1914, is no greater than the assessed value?

A. No sir."

Witness bought lot 2, block 31, Norman R. Smith's sub-division shown on this tabulation, March 13, 1914. Witness is then asked by defendant's counsel:

"Q. That property, according to Mr. Ware's testimony was worth \$6,000 on the first of March, 1914; will you state what you paid for it?

MR. PETERS: I do not think that would be competent. It would be competent in cross examination for him to tell the individual sales and purchases, but not what he might have bought, by his own counsel asking him direct.

MR. RIDDELL: We are going to couple this up with a great many others.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception.

THE COURT: Exception allowed.

Are those the same ones you asked Mr. Ware about?

MR. EWING: That is it, exactly. The foundation for this has been laid. I asked him if the testimony should show that that lot which is valued at \$6,000.00 should actually have been sold for \$2500.00, whether he would not claim from that that his judgment on valuation had been wrong, and he said "No".

He paid \$2500 for this on March 13, of that year. He supposes that was its value, or pretty near such.

Lot 3, block 31, Norman R. Smith's sub-division was bought by witness March 17, 1914, with a batch of other property. This lot was valued in that purchase at three thousand dollars.

Witness explains the manner in which he made up this tabulated statement of values as follows:

"Q. What was the manner in which it was made up?

A. I took them from my tax receipts in 1914.

I did not have time to make them all up and I brought those tax receipts along and finished here.

Q. (Mr. Peters) You made out this original statement which I hold in my hand, which is on the paper of the Citizens National Bank, did you not?

A. I did.

Q. You made that out in Port Angeles?

A. I did.

Q. What did you put down on that, how many of these claims?

A. I put down every one of them.

Q. Who put the furthest figures out here?

A. I put down the assessed valuation at home, and the valuation I would sell them for.

Q. The way you got at that was to take your tax receipts and you found what this Southeast of the Northeast quarter, and the Northeast quarter of the Southeast quarter; was assessed for on the tax receipts?

A. I did.

Q. And put that down in the next to the last column?

A. Yes, sir, next to the last.

Q. In all this property?

A. Yes, sir.

Q. Made out a complete list from the tax receipts you had?

A. Yes, sir, made a complete list from the tax receipts I had.

Q. And then sat down and put your own valuation after that?

A. Yes, sir.

MR. EWING: The other statements are made a little bit different from that.

MR. PETERS: Which other statements?

MR. EWING: That we will introduce later.

WITNESS: If these tax receipts are any good to you, you can have them, for 1914.

MR. FROST: Mr. Lauridsen, explained that he did not complete the list and he brought the tax with him and from the tax receipts the remainder of the typewritten list was made up.

MR. PETERS: I understand.

MR. EWING: Q. Since this has been typewritten you have carefully gone over it again?

A. Yes, sir.

Q. And you can say that the typewritten list which you have given the court is a correct statement under oath of the valuations which you put there?

A. Yes, sir.

MR. EWING: You don't object to it on that score, the assessment?

MR. PETERS: We may want to check it up later."

CROSS EXAMINATION

Q. Mr. Lauridsen, this paper which I hold in my hand here is the original of the typerwitten statement that has now been admitted as defendants exhibit "29", is it not?

A. Yes sir.

MR. PETERS: I ask to have that admitted as the plaintiffs' exhibit, as being the original tabulation from which the typewritten statement, exhibit "29" of the defendants is made up.

MR. FROST: Did you make any corrections or alterations of the appraised value after coming to Seattle?

A. I did on some of them.

Q. Were those alterations or corrections noted in this, or in the typewritten statement?

A. They are noted on that. I will explain how that kind came about. I thought I was to put on the valuation as of to-day, but counsel for the defense tells me you must make it as to the appraised valuation in 1914, in March. It is like this: I have cleared some of these lots since, or partly cleared them.

Q. Cleared some of the city lots?

A. Cleared some of the city lots, had them slashed and burned off, and in another case there had been a street put in front, and others where there was no street in 1914, and consequently made them a little more valuable, and he made some corrections as to that, put them back to say, March, 15, 1914.

MR. PETERS: Did those corrections appear on the pencil sheet here?

A. They occur right on there.

Q. And as I understand you, the way in which this was made up, was by putting down the assessed valuation of these various properties that you own, and then putting down your estimate opposite each lot, and opposite each assessment, your estimate of the value of it in March, 1914?

A. Yes sir.

Q. About how long did it take you to make this up, Mr. Lauridsen?

A. I don't know as it took such a great while.

Q. Didn't you go out and look at the property while you were making it out?

A. No.

Q. You have had those properties, many of them, for a long while?

A. I have had some of it for twenty years.

Q. What do you value the northeast quarter of the Northeast quarter, and the Southeast quarter of the Northeast quarter of Section 10, Township 30, Range 5?

A. That is an 80 acres in section 10, township 30, range 5?

Q. Yes, sir, an 80 acres.

A. (witness referring to paper)

Q. Never mind the list. Let's dispense with that at the present time, and give your recollection.

MR. FROST: We object to that, because it is manifestly unfair.

WITNES: It is to refresh my mind. I have never seen the property myself.

MR. PETERS: We have a right to cross examine him for his best recollection without his list.

THE COURT: He may go to the map and look at it.

MR. PETERS: Certainly, but I don't want any list.

A. That is my own list. I can get that back, can't I?

MR. PETERS: The court says you may go to the map and look this piece of property up, the northeast quarter of the Northeast quarter and the Southeast quarter of the Northeast quarter of section 10, township 30, range 5.

A. That is about eight miles east of Port Angeles.

Q. What valuation did you put on that as of March 1914?

A. I don't exactly recollect what it was, that particular piece.

Q. What valuation did you put upon it?

A. I have put that valuation down there.

Q. What valuation do you now put upon it?

A. I put the same valuation on it to-day.

Q. Will you state to the court what valuation you put upon it, or are you not able?

A. I have it all right, down here, on that paper there.

Q. I ask you what valuation you put upon it now from your own recollection?

A. I have it down, and I am willing to sell at those figures.

Q. Mr. Lauridsen, what valuation do you put upon Lot 5, the Southwest quarter of the Southwest quarter of Section 23, Township 31, Range 10, as of March 1, 1914?

A. I can't recollect all those. There are so many descriptions there.

Q. I am asking you what valuation you now place upon this property, as its valuation the first of March, 1914?

A. I have it already placed there, fir.

Q. What is it?

A. I can't tell you off-hand, without referring to that paper there.

Q. What valuation do you put upon lots 3, and 4, and 13 and 14, in section 3, township 29, range 9 West?

A. I remember that particular one; I have an undivided half interest in that, and I offered that at \$1500.00.

Q. What do you say was the value of it March 1, 1914?

A. \$1500.00.

Q. Worth no more than that then?

A. Not to-day.

Q. I am not asking you what it is worth to-day; I am asking you what it was worth, March, 1914?

A. I have answered that by saying "\$1500.00."

Q. It is worth the same to-day as it was March 1, 1914?

A. I don't think so.

Q. You don't think so; you don't think there was any flurry in March 1, 1914, which afterwards died out?

A. Not on that particular piece of property.

Q. There wasn't any flurry on these?

A. No, sir.

Q. Was there on any other property at that time?

A. Very little in 1914, It had died by that time.

Q. When was this flurry?

A. In the latter part of 1912, and the beginning of 1913.

Q. Then did the market assume a stable condition from March 1913, on through that year and 1914?

A. I can't say "stable," because there has been no market values on anything that is there. You could not say absolutely that this is worth so much; It is just as you could catch a man that would be willing to buy.

Q. There wasn't any market value that you could refer to?

A. Not so you could say that it is worth so and so, because you could not sell it; sometimes you might, and sometimes you might not.

Q. You say, you own an undivided half interest in that?

A. Yes, sir.

Q. Your half interest is what value, \$1500.00?

A. Yes, sir.

Q. What was it assessed for?

A. I do not know the exact rate now. It was assessed very high.

Q. What is the character of the property?

A. It is an isolated claim, way back in the Sol Duc Valley, up near the Sol Duc Hot Springs.

Q. Was it timbered?

A. It is supposed to be timbered, yes, sir, there is timber on it.

Q. You have it listed here as assessed at \$5,170.00.

A. That is what the tax receipts state.

Q. You think \$1500.00 was a fair valuation of that on March 1, 1914?

A. It might be worth a good deal more; but I am willing to sell for that.

Q. (Mr. Frost) You are willing to sell your undivided one-half interest for that?

A. Yes, sir, I am willing to sell my undivided one-half interest for that.

Q. (Mr. Peters) What sort of land is the Northwest quarter of the Southwest quarter of Section 26, Township 31, Range 10?

A. I can't tell you off-hand. I have 160 acres there altogether, and I could not remember the different descriptions.

Q. What kind of land was it?

A. I have never seen it.

Q. What valuation have you placed upon it as to March 1, 1914?

A. I don't recollect.

Q. I am not asking you what recollection you have as to what you did place upon it in this list; what valuation do you now place upon it?

A. I place the same valuation that you found upon that list.

Q. That is the answer you desired to make to my question?

A. Yes, sir.

Q. You will make no further one?

A. No, sir, unless I can refer—

Q. Refresh your memory by looking at this statement. Was there timber on this, or not?

A. There is timber on some of it, I guess. My best recollection as to that is somewhere in the neighborhood of two thousand, or \$2500.00, somewhere between that, but the exact figure I do not remember what I put down.

THE COURT: That is for the 160 acres?

A. The 160 acres."

Referring to the purchase of lot 3, block 31, Norman R. Smith's tract, said to have been purchased by the witness in 1914, for \$3000, the witness states it was bought through Mr. Aldwell, and with four or five others. It is not an improved piece of land. It was a purchase on three years time, with a down payment of \$2000, on that and some other lots. This was coupled with four other lots which were sold at the time; for all of which they were to pay \$15000. The other lots were lot 2, block 16, and lots 8 and 9, block 30, Norman R. Smiths sub-division. Mr. Aldwell figured that this lot was worth \$3000 out of the \$15000 purchase. Witness does not remember what the others were figured at. The others may have been figured at \$4000, or \$4500. Mr. Aldwell told them at the time that he had a buyer for them at a good figure, and that they would make some money, but he did not have the buyer, and they got "stuck". All of those lots were in the sluicing and regrade district. Witness and his purchasers figured out that the property would enhance a good deal in value by the improvements, but it turned out the other way.

"Q. You excepted from this list your home and two other lots; why did you except your home?

A. I do not want to sell my home.

Q. What is the value of that?

A. I have no value on it.

Q. Set one.

A. I don't care to.

Q. I am asking you what was the value of your home property, Mr. Lauridsen, on March 1, 1914?

A. I have no value set on it.

Q. What is the description of it?

A. It is in lots 17 and 18, block 31, and the east part of lot 16.

Q. Block 31, and a part of lot 16?

A. Yes sir.

Q. How long have you kept it as a home?

A. For about twenty years.

Q. What was it assessed at March 1, 1914?

A. I don't remember.

Q. I will ask you now if you will put upon that the value, the market value of that property, March 1, 1914?

A. I don't care to.

MR. PETERS: I ask the court to direct the witness to answer.

THE COURT: If you have an opinion regarding the market value of it, you will give it; if you haven't one, say so.

A. I really have none, because my wife don't care to sell it.

THE COURT: Q. You are not asked about how much you would take for it; you are asked about what the market value was March 1, 1914, if you did want to sell it, and some man wanted to buy it, and you were not obliged to sell it, and the other man was not obliged to buy, what do you think it is worth?

A. There is a very peculiar circumstance connected with that. I had two buildings on it, and when this regrade come up I had to move those buildings, and one of the lots on the corner I had washed out entirely to come level with the new streets, so we are now living on one and a half lots with our two houses, and this improvement has cost forty-five hundred dollars since, that is not including the regrade, and assessment.

Q. Disregarding that; I ask you what the value of this property was, those three lots, March 1, 1914, to the best of your judgment?

A. Oh, I don't remember. I suppose lots in there before the regrade would sell for something like \$800.00, I should judge.

Q. \$800.00?

A. Yes sir, I should judge; There is plenty of view over the bay where I live there. They might bring even more than that; but somewhere around there, \$800 to a thousand dollars.

Q. When did the regrade go through that?

A. It started in the early Spring of 1914, probably in April.

Q. It was after that period I referred to here as March 1st, that the regrade started?

A. Yes sir.

Q. That is the actual work on the re-grade started?

A. Yes sir.

A. The re-grade started around somewhere March or April, 1914.

Q. And you have been assessed on those three lots \$4500 for this re-grade?

A. No sir, I haven't been assessed; I have been assessed 20 odd hundred, and moved the house; and cut out the corner lot where one of my houses formerly stood to be level with the new street grade, which has cost me altogether about \$4500. That is the reason I did not care to state the value.

Q. In this valuation of \$800 to a thousand dollars a lot, you were not including the value of the improvements then?

A. No sir.

Q. What was the value of the improvements on it March 1st, 1914.

A. I do not know what the value of the improvements was; I never looked at that. You mean the assessed valuation of it?

Q. No sir; I mean the value of the improvements, the market value of it? What it could have been sold for to a man who wanted to buy it, if you wanted to sell them on March 1st, 1914?

A. I could not tell you.

Q. Why can't you tell that just as well as you can make out a list of all those other properties, Mr. Lauridsen?

A. That is unimproved.

All the other property in this list of witnesses' is unimproved. Most of it is property he bought in on tax sales, and some in wild-cat lots on top of the hill. All of the lots on the last two pages of exhibit 29 are "wild-cast stuff". A great deal of this property the witness has never seen.

Q. What was the valuation March 1st, 1914, of the west 7 feet of lot 8, and all of lot 9, and the east half of lot 10, tide lands west of Laurel Street?

"A. I think there is 82 feet there. There is 7 feet, and 25 feet, and 50 feet. It is down in one bunch there, I think, isn't it?

Q. What is the valuation of this bunch together; the west 7 feet of lot 8, and all of lot 9, and the east half of lot 10?

A. I hold that a little bit higher than I could sell for; I hold it for about \$3000, the whole bunch.

Q. You hold that for \$3000?

A. I would, just at that time. That property has a speculative value.

Q. What was the value all that time on Lincoln Park, lots 12, 13 and 14, and of 15, and lots 26 and 27?

A. I would sell them for about \$1500.

Q. (Mr. Frost) You mean \$1500 for the bunch?

A. Yes, sir; for the bunch; they are bunched that way. I think they are assessed for a thousand dollars.

Q. (Mr. Peters) What was the value on that date of Lots 19 and 20 of block 35?

A. About \$4000.

Q. Now you have gone over this list during this last recess?

A. No, sir; I did not; I kept away from it. I looked at it for a minute. I took it that question would be asked.

Q. You did not go over there and take that list and read it?

A. I did, but I did not look at it two minutes.

Q. You did not look at it?

A. I looked at that ten you asked me about. You asked me about 80 acres in section 10, Township 30, and Range 5, and I looked at that.

Q. How long were you looking at that list?

A. A minute or so. The rest of the time I was talking to your crowd—

Q. When you went over there in those back benches, you took out that list and looked at this one lot?

A. Just that.

Q. Didn't you look at the other lots?

A. What was around there?

Q. To refresh your recollection on this list?

A. I hardly think it is fair to take away the list that I took from my books which are private.

Q. For that reason you thought you had a right to refresh your recollection through the recess?

A. I didn't look over but one or two pieces. The rest of the people will tell you so. I did not look at that only for a minute.

Q. What was the value on the dates given of lots 1 and 2, 19 and 20 of block 103?

A. Where is that located?

Q. Lots 1 and 2, 19 and 20, of block 103?

A. What was the question?

Q. I asked you what was the valuation, the market value of those lots on March 1st, 1914?

A. It may be around, possibly \$600. It may be a little more. I might have put a higher valuation on it, on account there is a street in front of them now.

Q. If you have here on this list a thousand dollars you desire to change that?

A. No, sir; I desire to leave that.

Q. Now you change from \$600 to a thousand?

MR. EWING: Explain it right now.

A. Yes sir, whatever that valuation is on there, that is the valuation.

Q. (Mr. Peters) I understand; I asked you

what your valuation of those lots was on the first of March, 1914, and I understood you to say it was around \$600.

A. I said I might have put it from 6 to \$800, didn't I say that?

Q. Then I asked you if it showed it was valued in this list, in exhibit 29, of a thousand dollars, whether that would change your opinion; now you say that they were valued at a thousand dollars.

A. I did not say so; If that list says so, and I put that down. I suppose that it is almost impossible to put a value on any property in Port Angeles, unless you have the figures to show what it cost you, and how long you have held it. I have them at home. I haven't them with me. The papers you have there you asked for, and then you put it in evidence, and I have nothing before me whereby I can place a valuation on several thousand pieces of property.

Q. Mr. Lauridsen, at the time you put down the valuations on this list here, plaintiffs exhibit "F", out of the assessed valuation which you had already put down, you had in mind the fact that one of the contentions of the plaintiffs in this case is that property of that character is very much under assessed, didn't you?

A. I will tell you how I come to make it up.

Q. I ask you to answer that question first, and if you desire any further explanation afterwards you may make it.

A. I had in mind that I would like to sell all of that property at double the assessed valuation, everything I have got, except my home and those two lots mentioned. I was here the other day and I heard the outrageous high figure that Mr. Ware put upon the property for you, and I concluded that if property was worth that I was a millionaire, pretty nearly; and it is worth it, so I offered to the defendants in this case, if they wanted to get all I had in Clallam county at double the assessed valuation, I would come here and offer it, and it is here for sale.

Q. You say that it was from that point of view that you made out this list?

A. Exactly." On re-direct examination, witness testified as follows:

"Q. The lot where you gave a valuation on the stand of \$800, Mr. Peters called attention to the fact that you listed it at a thousand dollars, and said the street improvements had nothing to do with it? Will you explain how you put the valuation of a thousand dollars upon that lot, what other features than the mere market value did you consider?

A. It is pretty hard to state any particular market value.

Q. You said something about the street having made a difference?

A. There is a street that has been put in there.

Q. And that has added to the value of the lot?

A. Yes sir.

Q. That is since March 1st, 1914?

A. I don't think so. I think it was on there before.

Q. But that is a fact that it would make you add to the value?

A. It is one of those things that is almost impossible. Sometime I might ask you a thousand dollars for a lot, but if you offered me \$800 I would be glad to take it.

Q. But the value of your home property—that you put \$500 a lot on was it?

A. Where we live?

Q. Yes sir.

A. I said from \$800, possibly to a thousand; I did not know.

Q. Do you remembr about Mr. Brown buying a lot right near there, or in the same block for \$375, or \$575, Maybe it was.

A. No, sir; I don't know. I don't know anything about that.

Q. Mr. Peters spoke about a flurry, Mr. Lauridsen, state to the court what happened in the way of a real estate boom, if there was such a thing in Port

Angeles between March 1st, 1912, and March 1st, 1914, just what happened to the real estate market in that town?

A. Well, there was a number of real estate men like Mr. Petit, and a fellow by the name of C. P. Dodge, from Seattle, they came up there, and a couple or three Victria real estate men came over there, and they bought property and sold it at fabulously high prices, whether it was genuine or fictitious, I don't know. I think I know some were genuine. I know of lots 6 and 7, block 31 right near where I live there that Mrs. Chambers bought a few years ago for \$700 and during this flurry she sold it for \$3200, half cash, and took a mortgage for the other half. This man Dodge, he sold it afterwards for \$5000 and got a thousand cash, and he said he took a second mortgage for a thousand dollars. To-day that lot is being foreclosed for the first mortgage.

Q. Of how much?

A. \$1600. That is either 6 or 7, I think it is lot 7, in block 31.

Q. Can you state when that flurry began?

A. It began in December, 1912.

Q. How long did it last?

A. Well, it is very hard to say how long it lasted. It lasted a few months, and then it commenced gradually to go down.

Q. In what way were its effects reflected on realty values in Port Angeles?

A. What happened?

Q. Real estate values in Port Angeles?

A. It had the effect that everybody put prices up on property.

Q. Did it stampede the people in Port Angeles?

A. That is a very hard question to answer. It made some of them wild. They would not sell at any price for the time being. Now you can go back there a year later and buy for almost nothing.

Q. Was the condition of the real estate market that obtained from December, 1912, or three or four

months afterwards, a natural or artificial condition in your opinion as a real estate operator?

A. It was artificial, absolutely.

Q. Was it due to any natural growth or development of the town, which would warrant conditions that obtained at that time?

A. No sir.

Q. As I understand you it was an artificial condition that was brought about by outside people? Is that true?

A. Outside people created the boom by buying this particular lot, and that was published in the papers that it was sold for five thousand dollars, and one poor fellow came over from Victoria with \$40,000, A. B. Steele, and he put it into different pieces of property, and he has lost the whole thing to-day, and he got hold of a lady by the name of Mrs. Glasgow that came there with Mr. Petit here, I think it was, that brought her down, and she had \$10,000, and lost it all. I have one of the most pitiful letters from the lady how she was taken in by buying property and paying so much on it, and was given to understand secretly that it could be sold at a bigger price, and she lost everything that she put in.

Q. You heard Mr. Ware's testimony?

A. I heard the first of it.

Q. State whether or not his valuations are not based in your opinion upon the prices brought about by the boom?

MR. PETERS: I object to that; if would be for the court to say.

MR. EWING: I will withdraw the question. I will withdraw the reference to Mr. Ware."

RE CROSS EXAMINATION

On recross examination witness admits that Petit & Sons, real estate men, come down to Port Angeles, November or December, 1912, and the man came from Victoria with \$40,000, and these people buying property fast and loose, made a pretty active market around Port Angeles for awhile. The Milwaukee railroad went down there in 1912 and 1913, about the winter

of 1912. The Michael Earles mill was built in May, 1914. It was pretty well along in 1913. The Olympic Power Plant was pretty well along, but the bottom had gone out of it, and they did not know whether they would succeed, or not, in getting it back. Witness admits that Earles' mill certainly had some effect on the real estate market. Witness has heard that some two hundred or four hundred men were employed in the Earles Mill. Witness and others have heard of all sorts of rumors about what the mill would probably cost and would do. He had heard that the mill would cost about a million dollars; admits that it is a big plant. Witness admits that the construction of this mill did help the real estate market of the town. He, therefore, would not call the effect of the Earles mill upon the real estate market artificial. The mill is still there; the railroad is still there, and building, and the Aldwell Plant did get the bottom put back into it, and is holding.

REDIRECT EXAMINATION

Mr. Frost, counsel for defendants, states that the Federal census for 1910, shows a population in Port Angeles of 2200 people. Witness Lauridsen says he thinks there are thirty-five hundred, Or four thousand, Real estate men claim five thousand. Being asked if lots in that town may be valued at \$15,000.00, witness says, "I would not pay that for any lot in Port Angeles", notwithstanding the fact that the Earles mill is there, and the railroad is there and the power plant is there.

The Milwaukee railroad connects with the Port Townsend and Southern. It does not connect with any of the Trans-continental roads.

The employees of the Michael Earles Mills live principally around the mill. That is two miles from town. The men at the logging operations stay in the woods, thirty to thirty-five miles from town. The brewery that was up there went into the hands of a receiver in 1911; thinks the cannery was in operation last year; does not know where the machinery is; had heard something about it being taken to Neah Bay to

put in a cannery there. He does not know the truth of it.

A rival steamship line to the Puget Sound & Navigation Company operating from Port Angeles to Seattle was established, but went into the hands of a receiver in the fall of 1913.

Over plaintiffs objection witness testified that one or two grocery concerns went down during this period, but no large concerns that he can remember of.

“Q. Do you remember the history of the purchase and sale of lots 2, 3 and 4, in block 311, and lot 14, in block 309, which you bought for your brother, Sam?”

A. Yes, sir.

Q. Do you remember what you paid for them?

MR. PETERS: When was this?

A. In January, 1914,—I paid \$140.00.

MR. RIDDELL: That is the one on the map assessed at \$120.00?

MR. EWING: Do you want to accept that statement of assessment, Mr. Peters?

MR. PETERS: Yes, sir.

Q. (Mr. Ewing) State the facts about the purchase of lots 18, in block 54, and lots 7 and 14 in block 172?

MR. PETERS: I do not think unless those are lots referred to by our testimony it would be competent, for this reason: that a person could be put upon the witness stand, and he could select favorable instances without limit, and we would have no way of getting back of that, and discovering the facts about it, and that is the reason why, in an opinion witness, the court allows the person who puts him upon the stand to ask him the general questions as to the market value of property in general.

THE COURT: The objection is overruled.

MR. PETERS: Note an exception?

THE COURT: Exception allowed.”

Lot 18, block 54, was bought in January, 1914, for \$300. It is stipulated by the parties that this lot is assessed for \$200. Lots 7 and 14, block 172, were

purchased at about the same time for \$175. This was assessed for \$100.

Referring to lot 1, block 308, and lot 13, block 392, and lot 13, block 120, of Carters Addition, witness is asked by defendants counsel to testify about the purchase of it. This is objected to by the plaintiff upon the same grounds as before, in the following manner: "MR. PETERS; I suppose it was understood that the same objection goes to all of this examination, and the same ruling and the same exception?"

THE COURT: It is so understood."

This was bought December 29th, 1913. Witness paid \$100 for the three lots; the assessment on these three lots is \$70.00. These were purchased in the open market.

RE CROSS EXAMINATION.

"Q. You seemed to have a great deal of faith in the market at that time?"

A. Well, I have always had a good deal of faith in Port Angeles.

Q. You were doing a good deal of buying of lots about that time, January, 1914, and December, 1913?"

A. That is about all I did buy, what I mentioned here.

Q. They were bargains, weren't they?"

A. Well, they were offered at that figure.

Q. These were bargains, were they not?"

A. I would not say they were bargains. I would like to sell them to-day for the same figure.

Q. I am speaking of the conditions at the time you got them; you considered them a good deal?"

A. I considered that property would go up, but it did not.

Q. You considered that you had a bargain in the purchase, did you not?"

A. I considered that I was buying them cheap enough, yes sir."

Witness admits that the Milwaukee Railway runs into the timber at the West of Port Angeles about thirty-five miles; east, it has not been completed

further than Sequim, but is projected to build to the Sound near Port Townsend. It is projected to run a line of car ferries from Port Angeles to Seattle, and the ferrying charges are absorbed by terminal freight rates on carload lots.

Witness admits that the Puget Sound Navigation Company is to-day operating the "Sol Duc", the "Souix", the "Waialeale" and the "Bellingham", from Port Angeles to Seattle. Witness admits that the "City of Angeles" to which he had referred as being in the hands of a receiver, was a slow boat, which the Puget Sound Navigation Company, with its fast boats had run off the Sound.

(Witness excused.)

G. E. SHIELDS, a witness for the defendant, sworn, testified as follows:

DIRECT EXAMINATION

Has resided in Port Angeles for the last 28 years; is in the Cigar business; has been in the store for about two years; has been interested in the store for thirteen years; his store is practically in the center of the business portion of the town. It is quite a place for everybody to congregate. Lots of gossip going on there. Witness never heard of any conspiracy or concerted action, agreement or understanding, between any of the county officials of Clallam County with reference to any intention to tax the timber owners in the west end of the county out of proportion with the other taxable property in Clallam County. If such conspiracy had existed, witness thinks he would have know of it, as he went around with all the young fellows, and particularly in a political way the last twelve or thirteen or fourteen years.

He was city clerk for four years, councilman-at-large for one year; has been pretty actively engaged in politics for the past 14 years; is a Democrat.

The members of the Board of Equalization for the years 1912, 1913, and 1914, were four of them Republicans and one Democrat. Mr. Hallahan was a Democrat. They all made separate campaigns.